

Fair Labor Standards Act

Legislative Changes Updated

FLSA Background

- ▶ Under FLSA, an employee is entitled to overtime premium pay of one-and-one-half times their regular rate of pay after working 40 hours in a week, unless an exemption applies.
- ▶ If an exemption applies, an employee is considered to be “exempt” and is not entitled to overtime pay no matter how many hours he or she works in a week.
- ▶ An exemption applies if the employee is salaried and is paid \$455/week (\$23,660 annually) and the position meets the requirements of the executive duties test, administrative duties test, or the professional duties test.

Some History

- ▶ March 2014: President Obama Calls for Overtime Regulations to Be Updated
 - ▶ President Obama directed the U.S. Secretary of Labor to modernize and simplify FLSA regulations. Concern that the minimum required salary for exemption (\$455/week), known as the salary threshold, had not kept up with inflation.
 - ▶ 1975, \$250/week
 - ▶ 2004, \$455/week - poverty line for family of four, 12th percentile of full-time salaried workers
- ▶ July 2015: DOL Issues Proposed New Overtime Regulations
 - ▶ DOL issued proposed regulation in July 2015, suggesting a raise to the 40th percentile of full-time salaried workers - \$921/week or \$47,892 annually based on data from 2013, and expected to be \$970/week or \$50,440 annually in 2016.

Final Rule

- ▶ Effective December 1, 2016
 - ▶ Raises minimum salary necessary for an employee to be exempt from overtime from the current \$455/week (\$23,660 annually) to \$913/week (\$47,476 annually);
 - ▶ Raises the minimum salary necessary for an employee to be exempt from overtime as a highly-compensated employee from \$100,000 annually to \$134,004 annually;
 - ▶ Provides for automatic updating of the salary thresholds every three years;
 - ▶ Allows employers to include nondiscretionary bonuses in an amount up to 10% of the minimum salary level;
 - ▶ Makes no changes to the duties test; and
 - ▶ Makes no changes to any of the other rules regarding compensable time and overtime.

Current	Proposed	Final
\$455/week	\$970/week	\$913/week
\$23,660/year	\$50,440/year	\$47,476/year

Automatic Increases

- ▶ Next salary threshold increase January 1, 2020
- ▶ DOL estimates:
 - ▶ Minimum salary threshold: \$984/week (\$51,168/year)

Year	Minimum Salary Threshold
2017	\$47,476
2020	\$51,168
2023	\$55,148
2026	\$59,437
2029	\$64,060
2032	\$69,042
2035	\$74,411

Rough projections based on DOL's estimated increase from 2017-2020.

Overtime Provisions that Will Remain Unchanged

- ▶ Public employers may continue to use compensatory time-off or “comp time” in lieu of cash overtime.
- ▶ Public employers may still use the 28-day work cycle of the 207(k) exempt for paying overtime to law enforcement officers and fire fighters.
- ▶ The fluctuating workweek will continue to be available as a method of paying overtime to those employees who sometimes work fewer than 40 hours per week and sometimes work more than 40 hours per week.
- ▶ Rules governing what time is compensable and what is not remain the same.

Next Steps

- ▶ Review all employee and their salaries:
 - ▶ Those below new threshold \$47,476 - non-exempt automatically
 - ▶ Those above new threshold \$47,476 - HR to review with Department Heads against FLSA duties tests (executive, administrative, professional) and determine whether or not exempt
- ▶ Correct any misclassified positions
- ▶ Develop list of positions/employees losing exemption status and classifications contain both exempt and non-exempt employees for Board review
- ▶ Develop communication plan to discuss FLSA changes:
 - ▶ Information meetings with Department Heads
 - ▶ Written communication to staff losing exemption status regarding change in rule and change in exemption status and what that means to them

Duties Tests - Executive

<input type="checkbox"/> Executive Duties Test		
An employee must meet ALL of the below to qualify as Exempt under the “executive duties test.”		
Earns at least \$913 per week (\$47,476 annually)	<input type="checkbox"/>	Yes
<input type="checkbox"/>	No	
Management is primary duty	<input type="checkbox"/>	Yes
<input type="checkbox"/>	No	
Supervises two (2) or more full-time (or equivalent) employees	<input type="checkbox"/>	Yes
<input type="checkbox"/>	No	
Has hiring, firing or promotion authority or hiring, firing or promotion recommendations are given particular weight	<input type="checkbox"/>	Yes
<input type="checkbox"/>	No	

Duties Test - Administrative

<input type="checkbox"/> Administrative Duties Test		
An employee must meet ALL of the below to qualify as Exempt under the “administrative duties test.”		
Earns at least \$913 per week (\$47,476 annually)	<input type="checkbox"/>	Yes
Primary duty is performance of office or non-manual work directly related to the management or general business operations of Jackson County	<input type="checkbox"/>	Yes
Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance	<input type="checkbox"/>	Yes

Duties Test - Professional

<input type="checkbox"/> Professional (Learned) Duties Test		
An employee must meet ALL of the below to qualify as Exempt under the “professional duties test.”		
Earns at least \$913 per week (\$47,476 annually)	<input type="checkbox"/>	Yes
<input type="checkbox"/>	Yes	No
Performs work requiring advanced knowledge	<input type="checkbox"/>	Yes
<input type="checkbox"/>	Yes	No
Advanced knowledge is in a field of science or learning	<input type="checkbox"/>	Yes
<input type="checkbox"/>	Yes	No
Advanced knowledge acquired by a prolonged course of specialized instruction	<input type="checkbox"/>	Yes
<input type="checkbox"/>	Yes	No
<input type="checkbox"/> Profession (Computer) Duties Test		
An employee must meet ALL of the below to qualify as Exempt under the “professional duties test.”		
Earns at least \$913 per week (\$47,476 annually)	<input type="checkbox"/>	Yes
<input type="checkbox"/>	Yes	No
Earns at least \$27.63 per hour	<input type="checkbox"/>	Yes
<input type="checkbox"/>	Yes	No
Performs system analysis, techniques and procedures to determine hardware, software or system functional specifications	<input type="checkbox"/>	Yes
<input type="checkbox"/>	Yes	No
Designs, develops, documents, analyzes, creates, tests or modifies computer systems or programs, either based on and related to user or system design specifications, or relates to machine operating systems	<input type="checkbox"/>	Yes
<input type="checkbox"/>	Yes	No

Additional Information

- ▶ <https://www.dol.gov/whd/overtime/final2016/>
- ▶ <https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/FLSA-Overtime-Rule-Resources.aspx>
- ▶ <https://www.sog.unc.edu/courses/course-materials/new-and-final-flsa-regulations>
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