

# 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, 12<sup>th</sup> 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 40<sup>th</sup> 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	
<b>An employee must meet ALL of the below to qualify as Exempt under the “executive duties test.”</b>	
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"/> <b>Administrative Duties Test</b>	
<b>An employee must meet ALL of the below to qualify as Exempt under the “administrative duties test.”</b>	
Earns at least \$913 per week (\$47,476 annually)	<input type="checkbox"/> Yes <input type="checkbox"/> No
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 <input type="checkbox"/> No
Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance	<input type="checkbox"/> Yes <input type="checkbox"/> No

# Duties Test - Professional

<input type="checkbox"/> <b>Professional (Learned) Duties Test</b>			
<b>An employee must meet ALL of the below to qualify as Exempt under the “professional duties test.”</b>			
Earns at least \$913 per week (\$47,476 annually)	<input type="checkbox"/>	Yes	<input type="checkbox"/> No
Performs work requiring advanced knowledge	<input type="checkbox"/>	Yes	<input type="checkbox"/> No
Advanced knowledge is in a field of science or learning	<input type="checkbox"/>	Yes	<input type="checkbox"/> No
Advanced knowledge acquired by a prolonged course of specialized instruction	<input type="checkbox"/>	Yes	<input type="checkbox"/> No
<input type="checkbox"/> <b>Profession (Computer) Duties Test</b>			
<b>An employee must meet ALL of the below to qualify as Exempt under the “professional duties test.”</b>			
Earns at least \$913 per week (\$47,476 annually)	<input type="checkbox"/>	Yes	<input type="checkbox"/> No
Earns at least \$27.63 per hour	<input type="checkbox"/>	Yes	<input type="checkbox"/> No
Performs system analysis, techniques and procedures to determine hardware, software or system functional specifications	<input type="checkbox"/>	Yes	<input type="checkbox"/> 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"/> 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>
- ▶ <https://www.sog.unc.edu/courses/course-materials/new-and-final-flsa-regulations>