

PREPARE NOW FOR THE FLSA OVERTIME CHANGES

On May 18, 2016 the U.S. Department of Labor published its Final Rule updating the Fair Labor Standards Act (FLSA) overtime regulations regarding the executive, administrative and professional exemptions. The Final Rule does not make any changes to the outside sales or computer professional exemptions.

EFFECTIVE DATE

The USDOL final regulations on FLSA exemptions will go into effect on **December 1, 2016**. Employers need to begin their internal analysis of exempt positions **now** and identify their options to minimize any negative impact on employee relations, direct payroll costs, budget implications, indirect administrative costs, and general operations.

THE FINAL RULE

- Sets the minimum level for FLSA White Collar Exemptions at \$913 per week (\$47,476 annualized) – up from the current \$455 per week (\$23,660 annualized), but down from the proposed \$970 per week (\$50,440 annualized)
- Sets the total compensation level for highly compensated employees (HCE) at \$134,004 annually – up from the current \$100,000.
- Provides for automatic increases in the salary levels every three years (beginning January 1, 2020) – with the minimum salary level indexed to the 40th percentile of salaries for full-time workers in the lowest wage census regions (currently the south region), and the HCE level indexed to the 90th percentile of salaries for national full-time salary workers.
- Allows employers to count nondiscretionary bonuses and other incentive payments, including commissions, paid on at least a quarterly basis, for up to 10% of the minimum salary level.
- Importantly, the Final Rule **DOES NOT:**

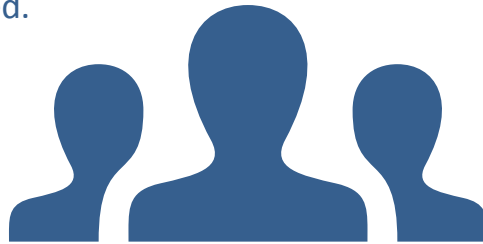
- Make any additional changes to the “salary basis” test for the FLSA White Collar Exemptions, other than increasing the salary level as noted above.
- Make any changes to any of the “duties tests” for the FLSA White Collar Exemptions or eliminate the “concurrent duties” test currently in place for the FLSA White Collar Exemptions.



IMPACT

Virtually all employers, large and small, will incur significant time and expense evaluating whether the job positions currently classified as exempt still qualify and, if not, what actions to take. Employers should immediately initiate a proactive review of their exempt positions as soon as possible.

- Fewer employees will qualify for exempt status.
- It will be especially difficult to make determinations as to positions that are within plus/minus 10% of the new salary threshold and positions where currently exempt employees perform non-exempt duties to any significant degree.
- Collective bargaining agreements will need to comply with the CBA in classifying or changing benefits. Also, employees reclassified as non-exempt may become part of the bargaining unit.
- The publicity generated by the nationwide impact will cause more exempt employees to worry about the emotional implications of being back on a time card reporting system if their classification is changed.



BEGIN YOUR REVIEW NOW!

1. Identify all current employees that are classified as exempt (not currently eligible for overtime) that are making less than \$47,476 per year.
2. Determine if your job descriptions and titles are up to date and if not, go through a process to perform a job analysis.
3. Determine how close these employees are to that threshold level.
4. Determine how many potential overtime hours the employee worked in the past year.
5. Determine the costs of that overtime based on time and a half calculations.
6. Determine if it is more cost effective to increase the employee to the \$47,476 level or to pay the anticipated overtime.

7. For those employees where it does not make economic sense to raise them to \$47,476 it will become necessary for you to determine how you will actually record their time worked, because once these employees are declared non-exempt employees (eligible for overtime), you must accurately track their actual time worked.
8. Communicate the outcome of your research to your management team as they will need to determine budgetary concerns.
9. You will need to institute a system of checks and balances to insure that the behavioral change of tracking time has actually occurred.
10. Monitor the annual index to insure that exempt employees remain exempt or whether further adjustments need to be made.
11. Develop a communication strategy as soon as possible. Involve your leadership team, managers, and supervisors. The message needs to be clear and concise.



HRO Partners can assist you during your review process. HRO consultants are knowledgeable of DOL/FLSA laws, practices and procedures. We have the tools to assist you at any level as you review and prepare for these changes.

CONTACT US

1.866.822.0123

901.737.0123

hro-partners.com

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