

Fair Labor Standards Act Part 541 "Overtime" Final Rule

Presented by the
U.S. Department of Labor
Wage and Hour Division



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Outline

- FLSA Overview
- White Collar Exemption Overview
- Overtime Final Rule Overview
- Final Rule Updates (Changes)
 - Standard Salary Level
 - Highly Compensated Employee (HCE)
Annual Compensation Level
 - Non-Discretionary Bonuses
 - Automatic Updates
- Final Rule Non-Changes
 - Salary Basis Test
 - Job Duties Test

FLSA: Overview

- Coverage
- Minimum Wage
- Overtime
- Youth Employment
- Recordkeeping & Posting

Coverage

Two types of coverage:

- Enterprise coverage: If an enterprise is covered, all employees of the enterprise are entitled to FLSA protections; and
- Individual coverage: Even if the enterprise is not covered, individual employees may be covered and entitled to FLSA protections

Minimum Wage

- Covered, non-exempt employees must be paid not less than the federal minimum wage for all hours worked
- The minimum wage is \$7.25 per hour
- Cash or equivalent – free and clear

Overtime Pay

- Covered, non-exempt employees must receive one and one-half times the regular rate of pay for all hours worked over forty in a workweek

Youth Employment

Federal youth employment rules set both hours and occupational standards for youth



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Recordkeeping & Posting

- The FLSA requires that all employers subject to any provision of the Act make, keep, and preserve certain records.
- Time clocks are not required and records need not be kept in any particular form.
- Covered employers must post a notice explaining the FLSA, as prescribed by the Wage and Hour Division, in a conspicuous place such as a lunch room or employee lounge area.

Exemptions and Exceptions

- There are numerous exemptions and exceptions from the minimum wage and/or overtime standards of the FLSA

“White Collar” Exemptions

The most common FLSA minimum wage and overtime exemption -- often called the “EAP” or “white collar” exemption -- applies to certain:

- Executive Employees
- Administrative Employees
- Professional Employees

Three Tests for Exemption

Salary Basis

Salary Level

Job Duties

New Overtime Rule Overview

- March 2014 - Presidential Memorandum
- July 2015 – Notice of Proposed Rulemaking
- May 23, 2016 – Final Rule Published
- December 1, 2016 – Final Rule Effective Date

New Overtime Rule Changes

- **Salary Level Increases**
- **Nondiscretionary Bonuses**
- **Automatic Updates**

New Overtime Rule

Standard Salary Level and Highly Compensated Employees

- **Standard salary level - pursuant to 29 CFR 541.600**

Current
\$455

Effective 12/1/2016
\$913 per week

- **Highly Compensated Employee (HCE) - pursuant to 29 CFR 541.601**

Current
\$100,000

Effective 12/1/2016
\$134,004 per annum

New Overtime Rule Special Salary Levels

- **American Samoa – pursuant to 29 CFR 541.600**

Current
\$380

Effective 12/1/2016
\$767 per week

- **Motion Picture industry - pursuant to 29 CFR 541.709**

Current
\$695

Effective 12/1/2016
\$1397 per week

New Overtime Rule

Nondiscretionary Bonuses

- Nondiscretionary bonuses and incentive payments (including commissions) are forms of compensation promised in advance to employees (e.g., bonuses for meeting set production goals, retention bonuses, and commission payments based on a fixed formula).
- May be used to satisfy up to 10% of the standard salary level.
 - Minimum of 90% (approx. \$822) of standard salary level must be paid as a weekly salary.
- Payments must be paid on a quarterly or more frequent basis.

New Overtime Rule Catch-up Payments

- If an employee does not earn enough from the nondiscretionary bonus, commission, or incentive payment in a given quarter to meet the standard salary level – an employer may make a “catch-up” payment within one pay period of the end of the quarter.
- Any such “catch-up” payment will count only toward the prior quarter’s salary amount and not toward the salary amount in the quarter in which it is paid.

New Overtime Rule Example – (Year 2017)

Qtr 1: Jan thru Mar - \$822/wk + \$2000 bonus

Qtr 2: Apr thru Jun - \$822/wk + \$600 bonus

Qtr 3: Jul thru Sep - \$822/wk + \$2000 bonus

Qtr 4: Oct thru Dec - \$822/wk + \$500 bonus

(+\$683 catch-up payment – 1st pay period in Jan)

New Overtime Rule

Highly Compensated Employees (HCE)

- HCEs must receive at least the full standard salary level amount each pay period on a salary or fee basis without regard to the payment of nondiscretionary bonuses and incentive payments. **(No Change to this principle)**
- Nondiscretionary bonuses and incentive payments (including commissions) may be counted towards the highly compensated employees' total annual compensation requirement. **(No Change to this principle)**
- The HCE test does not allow employers to credit nondiscretionary bonuses or incentive payments (including commissions) towards the standard salary level weekly requirement.

New Overtime Rule Automatic Updates

- Every three years beginning January 1, 2020, the standard salary and annual compensation levels will be automatically updated.
- At least 150 days before the effective date, the Secretary will publish a notice in the Federal Register of the updated salary and total annual compensation amounts that will be required.

New Overtime Rule

Updating the Standard Salary Level

Standard salary level – updated to equal the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region.

New Overtime Rule

Updating Special Salary Levels

- American Samoa – updated to maintain the ratio to the standard salary level at 84 percent
- Motion picture producing industry – updated by increasing the base rate proportionately to the change in the standard salary level.

New Overtime Rule

Updating HCE Compensation Level

Highly compensated employees – updated to equal the 90th percentile of annualized earnings of full-time salaried workers nationally.

New Overtime Rule

No Changes

No Changes:

- The Final Rule did not make any changes to the Salary Basis test

Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- Need not be paid for any workweek when no work is performed

Deductions From Salary

- An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the business
- If the employee is ready, willing and able to work, deductions may not be made for time when work is not available

No Salary Requirements

- The salary level and salary basis tests do not apply to:
 - Outside Sales Employees
 - Doctors
 - Lawyers
 - Teachers
 - Employees in certain computer-related occupations paid at least \$27.63 per hour

New Overtime Rule

No Changes

No Changes:

- The Final Rule did not make any changes to the Duties Tests

Executive Duties

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight

Administrative Duties

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

Professional Duties

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction **OR**
- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor

Computer Related Occupations

To qualify for the computer employee exemption the employee must receive either:

- A guaranteed salary or fee of \$913 per week or more, or
- An hourly rate of not less than \$27.63 per hour and
 - Must be employed as an analyst, computer programmer, software engineer or other similarly skilled and
 - The primary duty must be in design, development, creations, systems analysis etc. (as defined in the regulations).

Outside Sales

- Primary duty is
 - Making sales or
 - Obtaining orders or contracts for services or facilities for consideration paid by customer and
- Customarily and regularly engaged away from the employer's place(s) of business in performing such primary duty
- No compensation test

Questions



Additional Information

Other resources include:

- Regulations – 29 CFR Part 541
- New Overtime Rule - Guidance Documents
- Fact Sheets
- Frequently Asked Questions
- Call or visit the nearest WHD Office
 - Visit the WHD homepage at:
www.dol.gov/whd/overtime/final2016
 - Call the WHD toll-free information and helpline at: **1-866-4US-WAGE (1-866-487-9243)**