

WHAT YOU NEED TO KNOW



## Overtime Exemption Rules Arrive

After a long wait, the Department of Labor (DOL) has released the revisions to the white collar overtime exemption rules in the Fair Labor Standards Act. The [new rule](#) becomes effective on December 1, 2016.

### Enterprises

Generally speaking, the Fair Labor Standards Act applies to employees of “enterprises.” Enterprises are:

- A federal, state, or local government agency
- A hospital; or an institution primarily engaged in the care of the sick, the aged, or the mentally ill or developmentally disabled who live on the premises; (it does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit)
- A pre-school, elementary or secondary school or institution of higher learning (e.g., college), or a school for mentally or physically handicapped or gifted children (it does not matter if the school or institution is public or private or operated for profit or not-for-profit)
- A company or organization with annual dollar volume of sales or receipts in the amount of \$500,000 or more

Employees may still be covered even if an employer isn’t an enterprise, due to interstate commerce requirements.

### Overtime Regulations, Generally

Non-exempt, or “overtime eligible,” workers in the United States are entitled to time-and-a-half pay for their hours worked after 40 hours in a week. Some [specific jobs](#) are considered exempt, such as airline employees, farmworkers, seamen on American vessels, switchboard operators, and executive, administrative, professional and outside sales employees who are paid on a salary basis.

The “white collar” or “EAP” exemption covers executive, administrative, professional, outside sales, and computer employees. The white collar exemption salary level was last set in 2004 at \$455 a week or \$23,660 a year. That salary level is now below the federal poverty level for a family of four. The new

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standard is \$913 a week or \$47,476 annually. With the new regulations, in order to qualify for an overtime exemption, a white collar employee must:

1. Be salaried, meaning that they are paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the "salary basis test");
2. Be paid at least a specific salary threshold, which is now \$913 per week (the equivalent of \$47,476 annually for a full-year employee), known as the "salary level test"; and
3. Primarily perform executive, administrative, or professional duties, as provided in the Department's regulations (the "duties test").

The long-standing rules regarding the standard duties test have not been changed. However, because many employers misinterpret the duties test, any employer that believes it has an employee or employees who qualify as exempt should consider going back through the test with their attorney.

## Highly Compensated Employees

The rule also moves the highly compensated employee salary level to \$134,004 a year. The highly compensated employee exemption rule imposes a very minimal duties test. This means most white collar workers will not be eligible for overtime if they make more than \$134,004 annually. This was previously set at \$100,000.

## Calculating Salary

For the first time ever, regulations will allow employers in certain circumstances to consider bonuses and commissions when measuring an employee's salary, to determine if the employee is exempt or not. Nondiscretionary bonuses, incentives, and commissions may be counted toward up to 10 percent of the required salary level, so long as employers pay those amounts on at least a quarterly (or more frequent) basis. Practically, an annual end-of-year bonus could not be used when calculating a white collar employee's exemption status.

## Automatic Updates

The salary level used to determine exempt status for white collar workers will now be automatically updated every three years. The first update to the threshold will be in January 2020, and it will be announced by August 1, 2019.

## Impact

Many employers will need to re-evaluate their employees currently classified as exempt. In the event those employees earn less than the threshold amount, they must be re-classified as non-exempt and paid overtime for time worked over 40 hours per week. The government anticipates that the new threshold will make 4.2 million salaried workers eligible for overtime pay. They also have determined that the largest payroll increases per establishment are expected in the sectors of hospitals (up to \$54,430 per entity), food manufacturing (up to \$26,158 per entity), and transportation equipment manufacturing (up to \$20,666 per entity). Only two sectors – food places/drinking places, and food manufacturing – should exceed two percent of average payroll due to the changes.

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