

New Overtime Rules



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The Fair Labor Standards Act



The FLSA requires employers to pay overtime to all employees, **unless exempt from the FLSA:**

- Administrative Employee
- Executive Employee
- Professional Employee
- Computer Professional
- Outside Sales Employee
- “Highly Compensated Employees”

The FLSA Basics



Two tests for determining applicability of Exemption:

1. Duties; **and**
2. Salary Basis

(not in the case of *Teacher* and “*Academic Administration*” exemptions, which are driven by duties only—*so no salary basis*)

The FLSA Basics



The Duties Test

The FLSA Basics



Executive Exemption

- Primary duty must be managing the enterprise or department.
- Regularly directing the work of at least two other full-time employees.
- Authority or strong input on hire/fire, promotions, demotions, etc.

The FLSA Basics



Administrative Exemption

- Office or non-manual work directly related to management or general business operations of the employer.
- Primary duty includes exercise of discretion and independent judgment with respect to matters of significance.

The FLSA Basics



Professional Exemption

- ***Learned Professional***: Primary duty includes work that requires knowledge of an advanced type in a field of science and learning customarily acquired by a prolonged course of specialized intellectual instruction.
- ***Creative Professional***: Primary duty includes work that involves invention, imagination, originality or talent in a recognized field of artistic or creative endeavor (“*Creative Professional*”).

The FLSA Basics



Teachers

- Primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment.
- The salary and salary basis requirements **do not** apply to teachers.

The FLSA Basics



Education Administration Employees

- Compensated on a salary basis that is ***at least equal to the entrance salary for teachers*** in the school.
- Primary duty performing administrative functions directly related to academic instruction or training in a school.
 - **Examples:**
 - ✦ superintendent and any assistants responsible for administrative matters such as curriculum, methods of instruction, measure and testing of students;
 - ✦ principals, vice-principals, department heads, academic counselors.

The FLSA Basics



The Salary Basis Test

The FLSA Basics



- Employee must be paid on a salary basis
- ***Current Salary Level:*** \$455/week (\$23,660 annual)
- ***Final Rule:*** \$913/week (\$47,467 annual)

The Final Rule



- **Goes into effect on December 1, 2016.**
- **Does not impact the Duties Test.**
- More than doubles the **standard salary level** required for an employee to satisfy the White Collar exemptions.
 - **Salary level increases from \$455/week (\$23,660 annual) to \$913/week (\$47,467 annual):** tied to 40th percentile of earnings of full-time salaried workers in lowest income Census region.

The Final Rule



- Permits employers to use nondiscretionary bonuses and incentive payments to satisfy up to 10% of the standard salary level.
- **Increases total annual compensation for “Highly Compensated Employees” from \$100,000 to \$134,004:** tied to 90th percentile of full-time salaried workers nationally.
- Includes mechanism for automatically adjusting every 3 years to maintain levels at above percentiles.

Compliance



- ***Primary Inquiry - does the employee regularly work more than 40 hours in a week?***
- If so, consider:
 - Increasing salary to new salary level
 - Maintaining current salary but paying overtime when due (must track hours)
 - Adjusting schedules to reduce overtime and requiring advanced authorization for overtime

Questions?



Thank you!



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