New Overtime Rules
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”
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
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.
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:
  o Increasing salary to new salary level
  o Maintaining current salary but paying overtime when due (must track hours)
  o Adjusting schedules to reduce overtime and requiring advanced authorization for overtime
Questions?
Thank you!

Education Law Team:

- **Lynne C. Adams**
  (602) 640-9348  
ladams@omlaw.com

- **Nathan T. Arrowsmith**
  (602) 640-9314  
narrowsmith@omlaw.com

- **John L. Blanchard**
  (602) 640-9304  
jblanchard@omlaw.com

- **Chelsea Sage Gaberdiel**
  (602) 640-9337  
cgaberdiel@omlaw.com

- **Kristin L. Windtberg**
  (602) 640-9367  
kwindtberg@omlaw.com