

REVISED OVERTIME RULES UNDER THE FAIR LABOR STANDARDS ACT



In 2014, President Obama directed the Department of Labor to update and modernize the regulations governing the exemption of executive, administrative, and professional (EAP) employees from the minimum wage and overtime pay protections of the Fair Labor Standards Act (FLSA or Act). After an extensive review of average salaries, as well as roles and responsibilities of salaried employees around the country, the DOL responded to the President's request.

The full text of the Final Rule is available at the Federal Register Site. It focuses primarily on updating salary and compensation levels needed for EAP workers to be exempt (from overtime pay). The key provisions are as follows:

1. The standard salary level is set at the 40th percentile of earnings of full-time salaried workers in the lowest wage Census Region (currently the South), which is \$913 per week or \$47,476 annually for a full-year worker.
2. The total annual compensation requirement for highly compensated employees subject to a minimal duties test is set to the annual equivalent of the 90th percentile of full-time salaried workers nationally, which is \$134,004.
3. A mechanism has been established for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.
4. Employers are allowed to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.

The Final Rule makes no changes to the duties tests. The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (See page 2). The Department expects that the standard salary level and automatic updating will work effectively with the duties test to distinguish between overtime-eligible workers and those who may be exempt.

The effective date of the Final Rule is December 1, 2016.

OVERTIME FINAL RULES AND THE NON-PROFIT SECTOR

As of September 11, 2016, neither the Fair Labor Standards Act (FLSA) nor the DOL's regulations provide an exemption from the overtime requirements for non-profit organizations. In order to be subject to the overtime requirements and thus qualify for the Act's protections, employees must be "covered" by the FLSA. Coverage under the FLSA is usually achieved in one of two ways:

1. **Enterprise Coverage** – Businesses or organizations with annual sales or business of at least \$500,000. Income from contributions, member fees, most dues and non-cash donations are not counted toward the \$500,000 threshold. (Exceptions – hospitals, schools and pre-schools, government agencies and businesses providing medical or nursing care for residents are named enterprises regardless of their total sales or business).
2. **Individual Coverage** – Employees may still qualify for FLSA protection if they themselves are engaged in interstate commerce or in the production of goods for interstate commerce.

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While many non-profit organizations may not be covered enterprises under the FLSA, most non-profits are likely to have some employees who are covered individually and are therefore entitled to overtime protections guaranteed by the FLSA. Individual employee coverage is based on the nature of the particular employee's work activities.

Activities that are considered interstate commerce include:

- Making out-of-state phone calls
- Receiving and/or sending interstate mail or emails
- Ordering or receiving goods from an out-of-state supplier and
- Handling credit card transactions or performing the accounting or bookkeeping for such activities

The DOL will not assert that an employee who on isolated occasions spends an insubstantial amount of time performing such work is individually covered by the FLSA.

	EXECUTIVE	ADMINISTRATIVE	PROFESSIONAL
Salary Basis Test	<ul style="list-style-type: none"> • Employee must be paid on a salary basis 	<ul style="list-style-type: none"> • Employee must be paid on a salary or fee basis 	<ul style="list-style-type: none"> • Employee must be paid on a salary or fee basis
Standard Salary Level Test	<ul style="list-style-type: none"> • \$913 per week (\$47,476 per year for a full-year worker) 	<ul style="list-style-type: none"> • \$913 per week (\$47,476 per year for a full-year worker) • Special salary level for certain academic administrative personnel 	<ul style="list-style-type: none"> • \$913 per week (\$47,476 per year for a full-year worker) • Salary level test does <u>not</u> apply to doctors, lawyers, or teachers
Standard Duties Test	<ul style="list-style-type: none"> • The employee's "primary duty" must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise (and managing 2 full-time employees as well) • Additional requirements provided in 29 CFR 541 Subpart B 	<ul style="list-style-type: none"> • The employee's "primary duty" must include the exercise of discretion and independent judgement with respect to matters of significance. • Additional requirements provided in 29 CFR 541 Subpart C 	<ul style="list-style-type: none"> • The employee's "primary duty" must be to primarily perform work that either requires advanced knowledge in a field of science or learning or that requires invention, imagination, originality, or talent in a recognized field or artistic or creative endeavor. • Additional requirements provided in 29 CFR 541 Subpart D

For more information regarding the new Overtime rules, visit the Department of Labor website at www.dol.gov or review their report “Guidance for Non-Profit Organizations on Paying Overtime under the Fair Labor Standards Act” at www.dol.gov/whd/overtime/final2016/nonprofit-guidance.pdf.