

United States Department of Labor: Overtime Final Rule

On May 18, 2016 President Obama announced the publication of the Department of Labor's (DOL) final rule on overtime regulations which marked the fruition to his 2014 Presidential Memorandum directing the DOL to update regulations defining which white collar workers are protected by the Fair Labor Standards Act's (FLSA) minimum wage and overtime standards. The rule will become effective and enforceable on December 1, 2016. The rule will directly affect employers and employees. It is recommended that employers are familiar with the "duties test". In addition, there are several key provisions of the new rule to have knowledge of before December 1, 2016.

1. The minimum salary compensation level increases from to \$455 to \$913 per week or from \$23,660 to \$47,476 annually. This is the 40th percentile of full-time salaried workers in the lowest-wage census region.
2. The total annual compensation requirement for highly compensated employee (HCE) increases from \$100,000 to \$134,004 subject to a minimal duties test. This is the 90th percentile of full-time salaried workers across the nation.
3. The rule includes a provision for automatic increases to salary and compensation levels to occur on a three year interval to maintain the current established percentiles.
4. The rule provides for up to 10 percent of the salary threshold for non-HCE employees to be achieved by non-discretionary bonuses, incentive pay, or commissions. These payments are required to be paid on at least a quarterly basis to qualify.
5. The rule does NOT make any alterations to the "duties test". The duties test determines whether "white collar" salaried employees earning more than the salary threshold are ineligible or exempt from overtime pay. The exemption is specific to executive, administrative, outside sales, or professional workers.

Who Is Required to Comply

In general, employees of enterprises that have annual gross revenue of \$500,000 annually are covered by the FLSA and their employers must comply with the new rule. Furthermore, employees of hospitals or businesses providing medical or nursing care, for profit and non-profit schools, and public agencies are covered under the updated overtime rule. In addition, employees maybe be covered under the rule even if the rule does not apply to the business directly. According to the DOL, individual workers that are regularly "engaged in interstate commerce" are subject to the rule on an individual, non-entity basis.

How to Comply

An employer can comply with the new rule several ways. The options are detailed below and can be used individually or in combination to achieve compliance:

1. Increase employee's salary of an employee who meets the duties test to the minimum new salary level to retain his or her exempt status
2. Pay an overtime premium of one and a half times the employee's regular rate of pay for any and all overtime hours worked
3. Reduce hours worked to 40 hours per week to avoid and eliminate overtime hours
4. Reduce an employee's base salary while maintaining the applicable hourly minimum wage and allocate overtime pay attributable to time worked over 40 hours