



Employer Compliance Update

DOL Issues New Overtime Payment Rules

HIGHLIGHTS

- The salary level for administrative, executive and professional employee exemptions will increase to **\$47,476**.
- The salary level for the highly compensated employee exemption will increase to **\$134,004**.
- The final rule does not change the duties test for white collar exemptions.

IMPORTANT DATES

May 18, 2016

The DOL announced a final rule updating white collar exemption qualification requirements.

December 1, 2016

The final rule becomes effective. Employers are required to comply with the final rule by this date.

OVERVIEW

On **May 18, 2016**, the U.S. Department of Labor (DOL) announced a [final rule](#) regarding overtime wage payment qualifications for the “white collar exemptions” under the Fair Labor Standards Act (FLSA).

The final rule increases the salary an employee must be paid in order to qualify for a white collar exemption. The required salary level is increased to **\$47,476** per year and will be automatically updated every three years. The final rule does **not** modify the duties test employees must meet to qualify for a white collar exemption.

Employers will need to comply with this rule by **Dec. 1, 2016**. This means that you will have to begin making some decisions about raising salaries or paying overtime for any salaried exempt employees who currently make less than \$47,476 per year.

HOW TO STAY IN COMPLIANCE

- Become familiar with the new rule by reading this Employer Compliance Update as soon as possible.
- Complete the Overtime Compliance Worksheet on page five of this document.
- Contact an HR Business Partner at A Plus Benefits with any questions.

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FLSA White Collar Exemptions

The FLSA establishes minimum and overtime wage payment protections for most workers in the United States. However, the FLSA also offers a range of minimum wage and overtime exemptions for certain workers. The white collar exemptions are minimum wage and overtime pay exemptions available to certain administrative, professional, outside sales, computer and highly compensated employees.

How do I know if my employees meet the requirements?

To qualify for the white collar exemption, an employee must meet a **salary basis test**, a **salary level test** and a **duties test**. An employee must meet all three tests in order to be exempt from FLSA minimum wage or overtime pay requirements:

- 1) The *salary basis test* is used to make sure the employee is paid a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work.
- 2) The *salary level test* is used to ensure that the employee meets a minimum specified amount to qualify for the exemption. This salary threshold provides employers with an objective and efficient way to determine whether an employee qualifies for a white collar exemption.
- 3) The *duties test* requires that the employee's job duties conform to executive, administrative or professional duties, as defined by law. This analysis requires a more thorough evaluation of whether an employee can be classified in one of the categories mentioned above (administrative, professional, outside sales, computer and highly compensated employee)

Higher Salary Threshold Requirement

The final rule increases the minimum salary level of \$455 per week (\$23,660 per year) to **\$913 per week** or \$47,476 per year.

The final rule also increases the \$100,000 salary level for highly compensated individuals to **\$134,004 per year**—the 90th percentile of wages earned by full-time workers across the entire United States.

These higher salary levels will be updated every three years to maintain the salary level at their corresponding 40th or 90th percentiles. The first automatic rate update is expected by Jan. 1, 2020. The DOL will publish updated rates in the [Federal Register](#) and on the Wage and Hour Division's [website](#) at least 150 days before their effective date.

Calculating Employee Wages

Administrative, Executive and Professional Employees

The final rule will allow, for the first time, non-discretionary bonuses and incentive payments (including commissions) to be used to satisfy up to 10 percent of an employee's standard salary level. This may include the payment of non-discretionary incentive bonuses tied to productivity and profitability. Non-discretionary bonuses and incentive payments may be used if they are paid on a quarterly basis, but more frequent payments are acceptable. However, the DOL will allow employers to make some "catch-up payments." The DOL will also allow employers to use significantly large bonuses toward 10 percent of the required salary amount.

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For example, Employee A is an exempt professional employee who is paid on a weekly basis. In January, February and March, Employee A received \$821.70 per week in salary (90 percent of \$913), and the remaining \$91.30 in nondiscretionary bonuses and incentive payments (including commissions) must be paid at least quarterly. If at the end of the quarter Employee A has not received the equivalent of \$91.30 per week in such bonuses, the employer has one additional pay period to pay the employee a lump sum (no greater than 10 percent of the salary level) to raise the employee's earnings for the quarter equal to the standard salary level ([SHRM](#)).

Highly Compensated Employees

Under the final rule, highly compensated employees qualify for an overtime exception if they meet the new salary level of \$134,004 per year. However these individuals must receive at least the full standard salary amount each pay period (i.e., \$913 per week, \$1,826 bi-weekly or \$3,956.33 per month) on a salary or fee basis (not counting non-discretionary bonuses and incentive payments).

The remainder of a highly compensated employee's wages may be calculated by including the full amount of non-discretionary bonuses and incentive payments (including commissions).

For example, Employee B is a highly compensated exempt level executive at your organization whose salary is \$75,000 per year who also receives a quarterly production bonus of \$15,000 would meet the threshold.

Impact on Employers

Given the significant increase in the salary level requirement, employers will need to increase employee salaries, or re-classify certain employees as non-exempt, solely based on their salary level. The DOL estimates that this final rule extends overtime protections to approximately 4.2 million workers who are currently exempt under the white collar rules and clarifies overtime compensation eligibility for another 5.7 million white collar workers and 3.2 million salaried blue collar workers whose entitlement to overtime pay will no longer rely on the application of the duties test. By completing the worksheet on page five, you'll have a better idea of what this ruling means for you and your business.

In addition, because of the short implementation deadline, employers should not delay becoming familiar with the new requirements and implementing any necessary changes into their timekeeping and payroll systems. Employers should also determine whether additional training on modifications is necessary for their managers and supervisors.

Finally, employers should also consider communicating with employees to inform them of how their wages, hours of work and timekeeping practices will be affected. Talking points for your employees may include the following:

- On May 18, 2016, the Department of Labor issued a new overtime pay rule that is set to go into effect on December 1, 2016
- The required salary level has been increased to \$47,476 for administrative, executive and professional employee exemptions.
- We are in the process of reviewing all salary levels within our organization that fall below the new threshold. We will notify employees who are impacted and keep the entire organization informed if there are any changes to our overtime policies.
- Please don't hesitate to reach out to your manager or an HR Business Partner at A Plus Benefits with any questions.

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Enforcement and Compliance

Employers that fail to comply with the final rule may be subject to a variety of overtime wage payment enforcement mechanisms, including the ones listed below.

Private employee lawsuits: These lawsuits can be initiated by employees either individually or through collective action to recover back pay, interest, attorneys' fees and court costs.

Administrative injunctions: These injunctions may include a prohibition on the shipment of goods in interstate commerce if the goods were produced in violation of the FLSA (including overtime wage payment provisions).

Civil fines for willful and repeated violations (up to \$1,100 per violation).

Criminal charges for willful violations (up to \$10,000 in fines, imprisonment for up to six months or both).

More Information

Please contact an HR Business Partner at A Plus Benefits at 1-800-748-5102 or email hr@aplusbenefits.com for more information on the FLSA and other wage and hour laws.

Overtime Compliance Worksheet

On **May 18, 2016**, the U.S. Department of Labor (DOL) announced a [final rule](#) regarding overtime wage payment qualifications for the “white collar exemptions” under the Fair Labor Standards Act (FLSA). This worksheet is designed to help small businesses prepare for the new Department of Labor overtime rules **taking effect December 1, 2016**.

- Identify employees currently classified as exempt from overtime with a salary under \$47,476 per year (\$3,956 per month) and estimate the number of hours they are currently working. Use a separate sheet if necessary.**

Employee Name	Current Salary	Current Job Title	Average Hours

- Compare the costs of increasing their salary to the new threshold with paying overtime.**
 - To do this, determine the hourly pay rate for each employee by dividing their annual salary by 40 hours per week and 52 weeks per year. For example an employee who makes \$40,000 per year would have an hourly pay rate of \$19.23 ($\$40,000/40/52$).
 - Then determine the overtime pay rate by multiplying the regular pay rate by 1.5. In the example above, the overtime rate would be \$28.85 ($\19.23×1.5).
 - Figure out the increased cost of overtime by multiplying the total number of hours over 40 each week by the overtime rate. For the example above, if the employee regularly works 45 hour per week, the increased cost of overtime would be \$7,501 per year ($5 \times \28.85×52). In this case, the cost of paying overtime would be slightly higher than increasing the employee’s salary to the threshold.
- Evaluate timekeeping options for employees moving from exempt to non-exempt.**
 - If you decide to move employees from exempt to non-exempt, paying them an hourly rate and overtime you will need to track their hours worked. You accomplish this with a printed timesheet, an electronic spreadsheet or a timekeeping system. A Plus Benefits has a web-based time clock that integrates seamlessly into our payroll software. Let you us know if you are interested in that option.
- Audit job titles to ensure they support job duty requirements for exempt employees.**
- Review overtime policies and procedures for employees.**
- Consider other systems that would be affected as a result of employees move from exempt to non-exempt (such as requesting time off, scheduling, working remotely, etc.).**
- Make a final decision for the company as soon as possible, but no later than November 1, 2016.**
- Notify A Plus Benefits of changes including pay rate, exempt/non-exempt status, job title, PTO accrual rate, etc. as soon as possible, but no later than November 15, 2016.**
- Notify affected employees of changes no later than November 15, 2016.**