



CHANGES TO EXEMPT EMPLOYEE STATUS

On May 18, 2016, the Department of Labor announced their Final Rule, updating the overtime regulations, which will impact employees who may currently be classified as Exempt and not entitled to overtime pay. Employers may want to take this opportunity to audit employee job descriptions to ensure that those employees, whose salary does not meet the new minimum, still qualify for Exempt status based on the DOL's Salary Basis Test.

The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. Specifically, the Final Rule:

1. Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South (\$913 per week; \$47,476 annually for a full-year worker);
2. Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally (\$134,004); and
3. Establishes a mechanism 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.

Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.

The effective date of the final rule is December 1, 2016.

How does this impact your business? Employers can choose from the following options in meeting the new rule, including:

- *Raise salary and keep the employee exempt from overtime:* Employers may choose to raise the salaries of employees to at or above the salary level to maintain their exempt status, if those employees meet the duties test (that is, the duties are truly those of an executive, administrative or professional employee). This option works for employees who have salaries close to the new salary level and regularly work overtime.
- *Pay overtime in addition to the employee's current salary when necessary:* Employers also can continue to pay their newly overtime-eligible employees the same salary, and pay them overtime whenever they work more than 40 hours in a week. This approach works for employees who work 40 hours or fewer in a typical workweek, but have occasional spikes that require overtime for which

employers can plan and budget the extra pay during those periods. Remember that there is no requirement to convert employees from salaried to hourly in order to calculate their overtime pay!

- *Evaluate and realign hours and staff workload:* Employers can ensure that workload distribution, time and staffing levels are all managed appropriately for their white-collar workers who earn below the salary threshold.

For Non-Profit Organizations, many will fall under the new rule requirements, however there are instances that exclude Non-Profits from FLSA. For information on whether Non-Profit employees qualify under Enterprise or Individual coverage, visit the [DOL Blog](#).

This information is not intended nor implied to be a substitute for professional advice. Contact your HR professional or Labor Attorney for requirements related to your specific business.