

OHIO LIBRARY COUNCIL
WEBINAR

NEW DOL WAGE-HOUR
REGULATIONS

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June 1, 2016

New Federal Overtime Regulations

- Issued by DOL on May 16, 2016.
- Effective December 1, 2016.
- Extremely limited changes to existing FLSA regulations.
- But potentially major application to any given employer.

FLSA Basics

- Employers must pay minimum wage.
 - New rules do not affect this requirement in any way.
 - Employers must pay overtime wages to employees who work over 40 hours in a week.
 - Unless there is an exemption.
- (Public Sector: Compensatory time discussed below.)
- Overtime is the only area of change in new regulations.

Exemptions

- FLSA provides for over 40 exemptions from overtime pay requirements.
- Virtually every exemption remains unchanged by new rules.
- “White collar” exemptions and “highly compensated employee” exemption are the only exemptions affected by new rules.

White Collar Exemptions

- Current Law: An employee may be classified as “exempt” from the FLSA overtime requirements, if the employee:
 1. Is paid at least \$455 per week on a salary basis (Salary Test); and
 2. Performs “administrative,” “professional,” or “executive” duties, as those terms are defined by law and DOL, or performs certain computer-related functions (Duties Test).
 - Computer-related exemption also applies to those earning at least \$27.63 per hour.

Highly Compensated Employee Exemption

- Current Law: An employee may be classified as “exempt” under the FLSA overtime requirements, if the employee:
 - Receives annual compensation of \$100,000 or more, which must include at least \$455 on a salary basis;
 - Primary duty includes office or non-manual work; and
 - Customary and regularly performs at least one of the exempt duties of an exempt executive, administrative or professional employee.

New Regulation

1. White-Collar Exemptions
 - a. Duties Test Unchanged
 - b. Salary Test increases from \$455 to \$913 (\$23,660 to \$47,476 annually)
 - i. Certain bonus, commission and incentive payments may now be included
2. Highly-Compensated Employee Exemption
 - a. Duties Test Unchanged
 - b. Salary Test increases from \$455 to \$913 and overall compensation increases from \$100,000 to \$134,004
3. Both include methods for implementing/calculating future adjustments

New Regulation – Chart Format

Provision	Current Regulations Effective Until 11/30/2016	Final Rule Effective 12/1/2016
Salary Level	\$455 weekly	\$913 weekly
Salary Level for Highly Compensated Employees	\$100,000	\$134,004
Automatic Adjusting	None	Every 3 years
Bonuses	No provision to count nondiscretionary bonuses and commissions toward standard salary level.	Up to 10% of standard salary level can come from nondiscretionary bonuses, incentive payments and commissions, if paid on at least a quarterly basis.

New Rules Have No Effect On:

- Any employee already regarded as non-exempt.
- Any hourly employee.
- Any employee exempt under one of the other exemptions.
- Any employee who never works more than forty hours in a week.
 - Except as to record-keeping.

Key Points

- No change to Duties Test
- Not effective until December 1, 2016
- If an employee was previously exempt under an exemption besides white collar or highly-compensated employee, they are still exempt
- If any employee was not exempt before, they are still not exempt
- You are not required to increase any employee's pay to \$913 per week

So, What's It All Mean?

- Employees who are exempt only under a “white-collar” exemption today, but who earn a salary of less than \$913 per week, will become non-exempt on December 1, 2016.
- Meaning if they work over 40 hours in a workweek after December 1, they are entitled to time and a half for their overtime hours.
 - No requirement to raise their pay to make them exempt.
 - No requirement to allow them to work overtime hours.
- No one else, except “highly compensated,” are even affected by this new rule.

Options to Consider

- Increase salary to \$913 per week.
- Keep current salary, but pay OT.
 - Consider imposing rules regarding working OT hours (and/or adjusting schedules/re-distributing hours).
- Change salaried employee to hourly wages.
- Adjust/reduce salary or hourly wage to anticipate OT hours and pay (but remember minimum wage).
- Alternative ways to calculate OT pay.
 - Fluctuating workweek method of paying OT (be careful).
 - Straight time salary for hours over 40.

Commission/Bonus

- Up to 10% of salary can come from non-discretionary bonuses, incentive payments and commissions, if paid at least quarterly. (White-collar exemptions only – not applicable to HCE.)
- Employer may make a quarterly catch-up payment (within one pay period of the end of the quarter).

What is Non-Discretionary?

Non-discretionary means “promised bonuses such as those announced to employees to induce them to work more efficiently or to remain with the firm ... Examples include individual or group production bonuses, and bonuses for quality and accuracy of work. Incentive payments, including commissions, are also considered non-discretionary.”

Future Adjustments Built Into New Rule

- Update salary threshold every three years.
 - 40th percentile of full-time salaried workers in lowest income region in the country (expected to be \$51,000 for first update on 1/1/20).
- Update “highly compensated” compensation level every three years.
 - 90th percentile of full-time salaried workers nationally.

Compensatory Time Off (in lieu of overtime wages)

- Public sector only
- Rules unchanged:
 - Must be agreed in advance;
 - Must be provided at rate of at least 1.5 hours for each OT hour worked;
 - Capped at 240 hours of comp time; and
 - Employee must be permitted to use the time promptly upon request.

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Questions?