

The Long-Awaited Final Overtime Rule Has Landed

Article By:

Employment Labor and Benefits at Mintz

Yesterday, the Department of Labor (DOL) released the final version of its long-anticipated update to the rule calculating overtime eligibility under the Fair Labor Standards Act. As you might recall, the DOL attempted to update the overtime rule back in 2016, but some states and business groups who opposed the rule successfully challenged it in court. The [Final Rule](#) increases the “standard salary level” to qualify for exemption from overtime, but not as drastically as the attempted 2016 update. The final rule is effective **January 1, 2020**, and we highlight its key provisions and provide next-step guidance below:

- **The new salary threshold for White Collar Exemptions is \$684/week (equivalent to \$35,568/year)**. The Final Rule increases the “standard salary level” threshold for the executive, administrative, professional, computer, and outside sales exemptions to \$684/week or \$35,568 annually. This new threshold ties the standard salary level to the 20th percentile of full-time salaried workers in the lowest-wage census region (the South) and/or in the retail industry nationally using current data. It represents an increase from the current standard of \$455/week or \$23,660 annually, which is roughly halfway between the current threshold and the threshold contained in the 2016 version, which was \$913/week or \$47,476 annually.
- **The New Salary Threshold for Highly Compensated Employees is \$107,432/year**. The Final Rule sets the new salary threshold for highly compensated employees (HCE) at \$107,432/year, up from the current standard of \$100,000/year. The 2016 version of the rule would have set the HCE threshold at \$134,004/year.
- **Employers may begin using Nondiscretionary Incentive Compensation to Meet up to 10% of the New Salary Threshold**. In line with the 2016 version, the new Final Rule allows employers to use nondiscretionary bonuses, commissions, and other incentive payments tied to productivity and profitability to account for up to 10 percent of the standard salary level. Note that this change still does not extend to the weekly threshold for HCEs, but can count towards the *total annual* HCE threshold. In order to credit such compensation toward the standard salary level test, employers must make such payments at least annually. The Final Rule also allows employers to make a “catch-up” payment to maintain the exemption in the case an employee does not receive enough in nondiscretionary compensation in a given year.

-
- **There is No Automatic Mechanism for Salary Threshold Updates.** Unlike the 2016 version, the 2019 Final Rule does not contain a mechanism for automatically increasing salary thresholds every 3 years. Instead, the DOL acknowledges that updating the salary thresholds regularly is important to avoid disruption, and reaffirms its intent to do so more often through notice and comment rulemaking.
 - **The FLSA Duties Test Will Not Change.** The Final Rule doesn't touch the definition of "primary duty" under the FLSA, so that term will continue to mean the principal or most important duty the employee performs in their job.
 - **Effective Date January 1, 2020.** The timing of the 2016 proposed rule gave employers roughly six months to prepare for impact. This time, employers only have **three months** to understand and implement changes in accordance with the rule. Don't wait another minute to begin preparing. The DOL estimates that the Final Rule will extend the right to overtime pay to 1.3 million workers who are currently classified as exempt, so your business is likely to feel the impact.

Employers, Take These Actions Now!

- Analyze whether you currently have exempt employees making less than \$684/week. If so, determine whether it is a better business decision to:
 - Raise their salaries to qualify as exempt under the new Final Rule;
 - Convert them to hourly non-exempt employees; or
 - Maintain their current salary and cap their overtime.
- Determine whether you pay Nondiscretionary Incentive Compensation to any affected employees. If you do, those payments can count for up to 10 percent of the new salary threshold. Remember that you must pay the Nondiscretionary Incentive Compensation at least annually in order for it to count towards the threshold.
- Take this opportunity to ensure that you are classifying your workforce correctly: i.e., exempt or non-exempt, employee or independent contractor. As you know, [California recently passed blockbuster legislation](#) disfavoring independent contractor classification, and it is always important to stay in compliance to avoid liability for misclassification.
- Finally, check your compliance with state wage laws. While the new FLSA Overtime Rule applies nationwide, some states have implemented stricter standards. If you are already complying with a higher or different standard, you must continue to do so in addition to meeting the standards of the new Final Rule.

Co-author: Morgan Tanafon

©1994-2025 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. All Rights Reserved.

Source URL: <https://natlawreview.com/article/long-awaited-final-overtime-rule-has-landed>