

New Wage and Hour Salary Threshold for Exempt Positions Announced Today

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On May 18, 2016, **President Obama** and **Labor Secretary Perez** announced the publication of the final rule updating the overtime pay protections. The Department says that the new rule "will automatically extend overtime pay protections to over 4 million workers within the first year of implementation." The new threshold is \$47,476. The rule is effective on December 1, 2016. Although the rule is final, it has not yet been published in the Federal Register.

Before December 1, management, administrative and professional employees earning more than \$23,660 a year are exempt from receiving overtime pay no matter how many hours a week that they work. Non-exempt employees must be paid time and one-half for all hours over forty worked in any given week. The new rule raises that threshold to \$47,476, which is the 40th percentile of earnings of full-time salaried workers in the lowest wage Census Region (currently the South).

Key Provisions of the Final Rule

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.

As a result of the much higher salary threshold, many businesses will likely convert salaried workers to hourly employees and track their hours on electronic or paper timesheets. Businesses will then track hours much more carefully and instruct employees who are no longer exempt not to work more than forty hours in a week. To make up the productivity gap, some businesses will likely hire part-time workers. If overtime work cannot be avoided, some companies may reduce the base pay of affected employees to account for the extra money they will otherwise make in overtime pay, now that it will have to be paid at time and one-half.

Old habits die hard and it may be difficult to reign in overtime hours when both the employee and the manager are accustomed to putting in a lot of extra hours.

While employers will have until December 1 to adjust to the new Rule, some employers may have difficulty implementing a change to the salary threshold in such a short period of time. Starting today, employers are advised to determine the formerly exempt positions impacted by the change and assess whether to convert any affected position to non-exempt, raise the salary level, and/or engage in some restructuring of the organization to better accommodate the new salary requirement. In addition, employers will need to consider the impact any structural change to formerly non-exempt positions will have on other positions in the company, be they exempt or non-exempt, on a going-forward basis. In addition, training of newly non-exempt employees on using the payroll system and avoiding overtime hours will become necessary. Payroll issues will have to be sorted out with the accounting department and/or your payroll vendor. Finally, state law requires written notice to employees of any change in practices or policies with regard to wages.

What should you be doing now?

You should identify now the positions that will be subject to the new Rule as of December 1. The review should consider how operations would be impacted by reclassification to non-exempt status and/or salary increases to ensure compliance and the impact of those changes on other employees in addition to those directly impacted.

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National Law Review, Volume VI, Number 139

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