

Guide to Navigating the New Overtime Regulations



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Introduction

The Fair Labor Standards Act (FLSA) requires that employers pay eligible non-exempt employees an overtime premium of at least 1.5 times their regular rate of pay for hours worked over 40 in a workweek.

Now, the U.S. Department of Labor (DOL) has extended overtime protections to far more employees by approving a revision to the federal overtime regulations, and an increase to the salary threshold for the executive, administrative, and professional white-collar exemptions from the overtime provisions, effective December 1, 2016.

On May 18, 2016 the DOL announced the Final Rule that will double the weekly salary threshold from **\$455 (\$23,660 annually) to \$913 (\$47,476 annually)**, for the executive, administrative, and professional white-collar exemptions under the FLSA.



The Final Rule expands the number of employees eligible for federal overtime protections. Certain types of businesses that tend to have a significant number of exempt managers who currently make more than \$23,660 annually, but less than \$47,476 annually — such as restaurants, daycare facilities, manufacturers, and retailers — could be affected most by the rule.

Due to this new rule, businesses may face increasing payroll costs and the potential for expanded recordkeeping requirements for certain employees. That's why we've assembled this guide to provide you with an overview of the FLSA, how your company might be impacted by the new rule, and what you can do to prepare.

The FLSA: Let's Get Back to Basics



The FLSA is a federal law that includes standards for minimum wage and overtime pay for covered employees. Before we dive into the new rule and its changes to the salary thresholds for exemption from those standards and how it may affect your business, it's important to understand what the FLSA does and does not address:

<i>FLSA Established Standards for:</i>	<i>FLSA Does Not Address Standards for:</i>
<ul style="list-style-type: none">• minimum wage	<ul style="list-style-type: none">• vacation, sick, or severance
<ul style="list-style-type: none">• overtime	<ul style="list-style-type: none">• premium pay for weekend or holiday work
<ul style="list-style-type: none">• child labor, and	<ul style="list-style-type: none">• pay raises
<ul style="list-style-type: none">• recordkeeping requirements.	<ul style="list-style-type: none">• fringe benefits
	<ul style="list-style-type: none">• discharge notices, and
	<ul style="list-style-type: none">• final pay.

FLSA Coverage

Now let's review who's actually covered by the FLSA provisions.

The FLSA covers more than 130 million workers, both full time and part time, in both the private and public sectors. Employees may be covered under the FLSA by the [Enterprise Rule](#) (by working for a covered employer) or the [Individual Employee Coverage Rule](#).

Enterprise Rule

The Enterprise Rule applies to employees working for:

- employers with at least \$500,000 in annual sales who have two or more employees engaged in interstate commerce or the production of goods for interstate commerce, or handling, selling, or working on goods or materials that have been moved in or produced for interstate commerce, or
- employers that are a hospital, nursing home, preschool, elementary or secondary school, college, or a federal, state, or local government agency.

Individual Employee Coverage Rule

The Individual Employee Coverage Rule applies to employees whose own actions involve the handling or production of goods for interstate commerce. Domestic service workers are also normally covered under the law.



Non-Exempt vs. Exempt Employees

Even though an employee may be covered under the FLSA, they may be exempt from some or all of the provisions of the law and its regulations.

A covered employee who is eligible for all the protections of the FLSA is considered to be a non-exempt employee. Other covered employees may be exempt from some or all of the protections of the FLSA. You may be familiar with the “white-collar” exemptions. Employees who meet the requirements for these exemptions are exempt from the minimum wage and overtime provisions of the FLSA.



Here’s a look at some of the differences between non-exempt employees and employees who meet the criteria for one of the white-collar exemptions:



Non-Exempt Employees:

- Subject to all of the protections of the FLSA
- May be paid on an hourly, salary, piece rate, or commission basis
- Must earn at least the federal minimum wage for all hours worked
- Must be paid the appropriate overtime pay for hours worked over 40 in the workweek



White-Collar Exempt Employees:

- Position must meet the job duties test for one of the “white-collar” exemptions
- Exempt from the minimum wage and overtime provisions of the FLSA
- Generally must be paid on a salaried or fee basis
- Generally must be paid a minimum of \$455/week (This will increase to \$913/week on December 1, 2016)



Highly Compensated Employee Exemption

The Highly Compensated Employee (HCE) exemption is another exemption under the FLSA. These are employees who are also exempt from the minimum wage and overtime provisions of the Act. To be eligible for the HCE exemption, employees must:

- have total annual compensation of at least \$100,000/year
- be paid at least \$455/week on a salary basis
- perform office or non-manual work, and
- customarily and regularly perform one or more of the exempt duties identified in the standard tests for executive, administrative, or professional exemptions.

However, as of December 1, 2016, the total annual compensation requirement needed to meet the HCE exemption would increase from \$100,000/year to \$134,004/year. To be exempt as an HCE, an employee must also receive at least the new standard salary amount of \$913 per week on a salary or fee basis and pass a minimal duties test.

Overtime

As we've already learned, overtime is one of the key provisions of the FLSA. But with changes on the horizon, let's review what overtime pay entails.

Employers are required to pay an overtime premium to non-exempt employees for all hours worked in excess of 40 hours in a workweek. That premium is a rate of at least 1.5 times the employee's regular rate of pay, regardless of the employee's basis of pay — hourly, salary, piece rate, commission, or any combination there of.

The regular rate of pay is determined by dividing the employee's total compensation for the week, including their wages, non-discretionary bonus, and commission payments where applicable, by the total number of hours worked in that week. The hourly rate for overtime would then be 1.5 times that regular rate.

In determining overtime rates, employers must count all hours worked by the employee in the workweek.

Hours worked includes any work carried out by the employee, even if the work was not requested by the employer. Hours worked includes all **compensable time**. Compensable time may include:

- travel time
- time spent in lectures, meetings, and training
- breaks and meal periods
- waiting time or on-call time, and
- sleeping time.

The criteria for the determination of compensable time can be fact-specific so you may want to consult an HR professional, labor and employment attorney, or the DOL's [fact sheet](#) on hours worked under the FLSA.

Overtime pay cannot be waived by the employee. If the employee works the time, the employee must be paid for that time in accordance with the FLSA and applicable state law.

The Final Rule—What Will Change?

On May 18, 2016, the DOL announced the release of their Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees under the FLSA, effective December 1, 2016. The changes include:



- An increase to the minimum salary level for exempt workers in the executive, administrative, and professional white-collar exemptions

-The threshold will be indexed to the 40th percentile of the weekly earnings for full-time salaried workers in the lowest income Census region (currently the South). On December 1, 2016, the threshold will increase from \$455/week (\$23,660/year) to **\$913/week (\$47,476/year)**.

- The total annual compensation requirement needed to meet the HCE exemption will increase from \$100,000/year to \$134,000/year, which is equal to the 90th percentile of the weekly earnings for full-time salaried workers nationally. The HCE salary threshold will be adjusted every three years.

- Salary thresholds for the executive, administrative, and professional exemptions will be adjusted every three years to ensure the threshold is maintained at the 40th percentile of weekly earnings for full-time salaried workers in the lowest income census region.

-Based on projections of wage growth, the threshold is expected to rise to more than \$51,000 with the first update on January 1, 2020.

- Non-discretionary bonuses and incentive payments (including commissions) may be counted toward up to 10 percent of the new standard salary level for the executive, administrative and professional exemptions, when applied as detailed in the Final Rule.



According to the [DOL](#): 4.2 million workers will be affected by the Final Rule based on their current salaries. These workers are currently ineligible for overtime. The DOL estimates that most of them (4.1 million) will become eligible for overtime when they work more than 40 hours (i.e., they will be converted to overtime-eligible status), while others (100,000) will receive a raise so that their salary is above the new threshold.

How Might the Final Rule Affect Businesses?

- Increased payroll expenses through additional overtime or higher salaries
- Employee morale issues (some employees may associate a change in status as a demotion).
- Increased hiring to avoid overtime hours, or
- The need to downsize to mitigate payroll expenses.

While these changes may present similar challenges for your business, there are important steps you can take to prepare for what lies ahead.

Making a Plan

The DOL announced the release of their Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees on May 18, 2016, with a December 1, 2016, effective date.

While this may seem like enough time to adapt, these changes may result in difficult decisions and administrative tasks that can quickly consume your schedule.

That's why it's important to have a plan in place before these changes take effect. With a solid plan, you can make the necessary adjustments to help mitigate disruption to your business operations.



Here are a few steps you may consider:

☐ Step 1

Review your payroll and identify those exempt employees whose salary is below the new salary thresholds. Be sure to confirm their exempt status using the duties test as well as the salary threshold.

☐ Step 2

Decide whether you intend to increase their salary to maintain exempt status or transition to non-exempt status.

☐ Step 3

If you decide to transition positions to non-exempt status, determine an hourly rate and whether overtime will be necessary for these employees. When you make these changes, be consistent to help mitigate discrimination claims.

☐ Step 4

Identify employees currently exempt under the HCE exemption. Do you need to increase their salary to retain the exemption? Can they qualify for one of the white-collar exemptions? Do they still meet the job duties criteria for an exemption?

☐ Step 5

Review your procedures and training for supervisors and managers on your timekeeping policies. Be sure to address what is considered compensable time for non-exempt employees.

☐ Step 6

Confirm you have a written policy requiring all non-exempt employees to track their time worked and a consistent method for tracking, e.g., time sheets, time clock, or time and attendance software.

☐ Step 7

Verify you have a written overtime policy indicating whether overtime hours must be approved in advance and by whom. Consider indicating discipline may result where employees fail to follow the policy — implement the policy consistently and always pay employees for overtime worked!

☐ Step 8

Review FLSA (and state) recordkeeping requirements and update your procedures to help ensure full compliance. As a reminder, here's a look at some of the recordkeeping requirements under the FLSA for non-exempt employees:

- time and day that each employee's work week begins
- hours worked each day per employee
- total hours worked each week per employee
- basis on which an employee's wages are paid
 - hourly, salary, or piece rate
- regular hourly pay rate
- total daily or weekly straight-time earnings
- total overtime earnings for the workweek

☐ Step 9




Develop your communication plan! Consider communicating with managers/supervisors first and then with impacted employees and the staff at large.

Need a Hand? Paychex Can Help



The new overtime rule will likely affect business operations across the country, but you don't have to go it alone. Paychex offers time and attendance and HR solutions that can help you make informed decisions, manage costs, and develop strategies that make sense for your business.

With payroll integration and real-time visibility to data, flexible time and attendance solutions from Paychex can help you:

 Track Employee Hours Worked	 Verify Accurate Pay	 Control Costs
<p>Capture and record up-to-the-minute employee hours worked with flexible time recording options, including touch-screen HID and biometric clocks, tablet kiosk software, and Web punch.</p>	<p>Review and edit time cards with just a few clicks. Help minimize human error in manual time-sheet preparation.</p>	<p>Increase awareness of key labor details so you can proactively control your most valuable and expensive resource. Receive automatic alerts identifying employees approaching overtime hours.</p>



Paychex also offers the support of an experienced and dedicated HR professional who can provide:

- Tools and guidance to help you determine your employees' status under the FLSA (exempt vs. non-exempt)
- Assistance in developing your company policies related to full- and part-time hours, overtime procedures, and employee classifications.
- Resources on how you can track employee hours worked to help you comply with the new overtime rules, and
- Management training and employee-focused seminars on a variety of employment law topics

Find out how Paychex can help you prepare for the new overtime rules. Give us a call at **855-979-5968** or visit **payx.me/time** today.

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If you require legal, accounting, or investment advice, or need other professional assistance, you should always consult your attorney, accountant, or other professional advisor to discuss your particular facts, circumstances, business, personal finance, and investment needs.

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