

Fair Labor Standards Act Part 541 – Overtime Final Rule

2019 Public Presentation

Steven McKinney
Community Outreach and Resource Planning Specialist
Northern New England District Office
603-606-3125
mckinney.steven@dol.gov



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

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Webinar Topics

- **Executive, Administrative and Professional Employee's Exemption Overview**
- **Overtime Final Rule Overview**
- **Changes in the Final Rule**
 - Standard Salary Level
 - Highly Compensated Employee Annual Compensation Level
 - Special Salary Levels for U.S. Territories
 - Non-Discretionary Bonuses
- **Provisions That Remain Unchanged**

“Executive, Administrative, and Professional” Exemptions

“Executive, Administrative, and Professional” Exemptions

The most common FLSA minimum wage and overtime exemption – often called the “EAP” exemption – applies to certain:

- Executive Employees
- Administrative Employees
- Professional Employees

Three Tests for Exemption

- **Salary Basis**
- **Salary Level**
- **Job Duties**

New Overtime Rule Overview

- **November 2016** – 2016 Final Rule Preliminarily Enjoined
- **July 2017** – Request for Information
- **August 2017** – 2016 Final Rule Invalidated
- **March 2019** – Notice of Proposed Rulemaking
- **September 2019** – Final Rule Published
- **January 1, 2020** – Final Rule Effective Date

New Overtime Rule Changes

- **Salary Level Increases**
- **Special Salary Levels**
- **Nondiscretionary Bonuses**

New Overtime Rule Standard Salary Level

- **Standard salary level**

<u>Currently enforced</u> \$455 per week	<u>Effective 1/1/2020</u> \$684 per week
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29 CFR 541.600

New Overtime Rule Highly Compensated Employees

- **Highly Compensated Employee**

<u>Currently enforced</u> \$100,000 per year	<u>Effective 1/1/2020</u> \$107,432 per year
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29 CFR 541.601

New Overtime Rule
Salary Increase - General

The \$684 per week may be paid in equivalent amounts for periods longer than one week:

- Biweekly: \$1,368
- Semimonthly: \$1,482
- Monthly: \$2,964

New Overtime Rule
Nondiscretionary Bonuses

- Nondiscretionary bonuses and incentive payments (including commissions) are forms of compensation promised in advance to employees (e.g., bonuses for meeting set production goals, retention bonuses, and commission payments based on a fixed formula).
- May be used to satisfy up to 10% of the standard salary and special salary levels.
 - Minimum of 90% (approx. \$616 per week) of standard salary level must be paid as a weekly salary.
- Bonuses must be paid on an annual or more frequent basis.

New Overtime Rule
Catch-Up Payments

- If an employee does not earn enough from nondiscretionary bonuses, commissions, or incentive payments to meet the standard salary level in the 52-week period – an employer may make a “catch-up” payment within one pay period after the end of the 52-week period.
- Any such “catch-up” payment will count only toward the prior 52-weeks salary amount and not toward the salary amount during the period in which it is paid.

New Overtime Rule
Example 1 - Year 2020

1/2/2020 – 12/30/2020

January – June
\$616 per week + \$1,300 bonus

July – December
\$616 per week + \$2,500 bonus

New Overtime Rule
Example 1 - Year 2020

Minimum Salary Level
\$684 per week = \$35,568 per year

Employer Paid
\$616 per week = 90% of standard salary level
\$616 X 52 weeks = \$32,032
Jun Bonus \$1,300 + Dec Bonus \$2,500 = \$35,832
Total paid = **\$35,832** exceeds the minimum amount of \$35,568 per year

New Overtime Rule
Example 2 - Year 2020

1/2/2020 – 12/30/2020

January – June
\$616 per week + \$1,300 bonus

July – December
\$616 per week + \$2,000 bonus

Catch-Up Payment
\$236

New Overtime Rule
Example 2 - Year 2020

Minimum Salary Level
\$684 per week = \$35,568 per year

Employer Paid
\$616 per week = 90% of standard salary level
\$616 X 52 weeks = \$32,032
Jun Bonus \$1300 + Dec Bonus \$2000 = \$35,332
Total paid = **\$35,332** is **\$236 less** than the minimum amount of \$35,568 required per year

New Overtime Rule
Highly Compensated Employees

- Annual compensation level is increased from \$100,000 to \$107,432.
- HCEs must continue to receive at least the full standard salary level amount each pay period (\$684 per week) on a salary or fee basis without regard to the payment of nondiscretionary bonuses, commissions, and incentive payments. **(No Change)**
- Nondiscretionary bonuses, commissions, and incentive payments may be counted towards the highly compensated employees' total annual compensation requirement. **(No Change)**

Note: The HCE test *does not* allow employers to credit nondiscretionary bonuses, commissions, or incentive payments towards the standard salary level weekly requirement.

Salary Basis Test

- An exempt employee must regularly receive a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- If employer chooses to use nondiscretionary bonuses and incentive payments to meet the standard salary level, the employee must be paid at least 90% of the standard salary level for any week in which the employee performs **any** work
- Need not be paid for any workweek when no work is performed

Deductions From Salary

- An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the business
- If the employee is ready, willing and able to work, deductions may not be made for time when work is not available

No Salary Requirements

- The salary level and salary basis tests do not apply to:
 - Outside Sales Employees
 - Doctors
 - Lawyers
 - Teachers
 - Employees in certain computer-related occupations paid at least \$27.63 per hour

Duties Tests
No Changes

- The Final Rule did not make any changes to the Duties Tests

Executive Duties
No Changes

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight

Administrative Duties
No Changes

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

Professional Duties
No Changes

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

OR

- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor

Computer-Related Occupations

To qualify for the computer employee exemption an employee, such as a computer analyst, programmer, or software engineer, must receive either:

- A guaranteed salary or fee of \$684 per week or more, or
- An hourly rate of not less than \$27.63 per hour and
- And their primary duty must be in design, development, or creation of computer systems, systems analysis etc. (as defined in the regulations).

Outside Sales No Change

- Primary duty is:
 - Making sales or
 - Obtaining orders or contracts for services or facilities for consideration paid by customer **and**
- Customarily and regularly engaged away from the employer's place(s) of business in performing such primary duty
- No compensation test

Resources

- WHD website at: www.dol.gov/whd/overtime2019/
- The 2019 Final Rule in its entirety can be found at: <https://www.federalregister.gov/documents/2019/09/27/2019-20353/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>
- The 17 Series fact sheets can be found at: <https://www.dol.gov/whd/fact-sheets-index.htm>
- Contact Steven McKinney at 603-606-3125
