



UNITED STATES DEPARTMENT OF LABOR

Overtime for White Collar Workers Overview and Summary of Final Rule

One of the most basic tenets of our economy is that a hard day's work should lead to a fair day's pay. For much of the past century, a cornerstone of that promise has been the idea that you're paid more if you work more than 40 hours in a week. Today, we are taking action that will make that promise a reality again for more of America's workers, too many of whom have been left working long hours for no additional pay, taking them away from their families and civic life without any extra compensation.

It wasn't always this way. The passage of the Fair Labor Standards Act gave most Americans the right to a minimum wage and time-and-a-half pay for more than 40 hours of work in a week. These rules apply to most hourly and salaried workers, but not to some white collar workers whose salaries and duties exempt them from the overtime pay requirement.

The white collar exemption was originally meant for highly-paid workers who had better benefits, job security and opportunities for advancement. Unfortunately, when left unchanged, the salary threshold is eroded by inflation every year. It has only been updated once since the 1970s—in 2004, when it was set too low. As a result, the threshold fails to help employers identify workers who are entitled to overtime pay, and it has left millions without overtime protections to which they should be entitled. This outdated salary threshold provides overtime protections to just 7 percent of full-time salaried workers today based on their pay, compared with 62 percent in 1975. In fact, the white collar exemption salary level set in 2004, \$455 per week or \$23,660 a year—means even workers earning less than the poverty line for a family of four may earn too much to automatically qualify for overtime.

In March 2014, President Obama directed the Secretary of Labor to update the overtime regulations to reflect

once again the intent of the Fair Labor Standards Act, and to simplify and modernize the rules so they're easier for workers and businesses to understand and apply. The Department of Labor conducted months of extensive consultations with employers, workers, unions, and other stakeholders to develop the proposed rule, and it carefully reviewed more than 270,000 comments from the public in order to develop the final rule.

Today, President Obama and Secretary Perez announced that the Department of Labor's final rule will automatically extend overtime pay eligibility to 4.2 million workers. The rule will entitle most salaried white collar workers earning less than \$913 a week (\$47,476 a year) to overtime pay. This long-awaited update will provide a meaningful boost to workers, and it will go a long way toward realizing President Obama's commitment to ensuring every worker is compensated fairly for their hard work.

The final rule will:

- **Put more money into the pockets of many middle class workers—or give them more free time.** By increasing the number of workers who are eligible for overtime when they work more than 40 hours in a week, employers will have a choice. They can either increase their employees' salaries to at least the new salary threshold, pay workers the overtime premium for extra hours, or limit their work to 40 hours in a week.
- **Prevent a future erosion of overtime protections and ensure greater predictability.** The rule will automatically update the salary threshold every three years based on wage growth over time. This means it will work better in the future by continuing to protect the workers it was meant to protect. Employers will be able to adapt more easily because they will

know when the salary updates will happen and how they will be calculated, and they will be able to estimate the amount of the salary update.

- **Strengthen overtime protections for salaried workers already entitled to overtime and provide greater clarity for workers and employers.** Establishing that white collar workers are not entitled to overtime pay involves clearing two hurdles: (1) assessing whether their salary is above the threshold and (2) applying a “duties test” to ensure that they have the kind of job that Congress meant to exclude from overtime protections. With the new, higher threshold, 8.9 million overtime-eligible salaried workers—and their employers—will be able to determine more easily that they should be receiving overtime pay. Because their salaries are below the new threshold, their employers will no longer have to figure out whether they pass the “duties test,” and they will no longer have to wonder if that test has been applied appropriately. This will simplify application of the rules and provide a bright line that protects the set of workers our workplace laws intended to protect.
- **Improve work-life balance.** Too many salaried, white collar workers today are overworked, and their employers have no incentive to limit hours because they aren’t required to provide additional pay when employees work more hours. Under this rule, employers will have a renewed monetary incentive to support work-life balance. Many workers will put in fewer hours without seeing a reduction in pay, giving them more time to spend with their families and in their personal pursuits.
- **Increase employment by spreading work.** The better work-life balance for workers who will now be eligible for overtime protection may create new opportunities for other workers. Some employers will hire additional workers—or give more hours to part-time workers—to cover work currently done during overtime hours.
- **Improve workers’ health.** Research indicates that working long hours is bad for many workers’ health and increases the risk of injury. Giving workers more downtime can help improve health and prevent injury.
- **Increase productivity.** The rule will promote improved productivity through workers’ improved morale and reduced turnover.

Summary of the final rule:

- **Salary threshold.** The final rule will raise the salary level for the first time since 2004. This increase will go into effect on December 1, 2016.
 - **Standard salary level.** The final rule will raise the standard salary threshold to equal the 40th percentile of weekly earnings for full-time salaried workers in the lowest-wage Census region, currently the South. This will raise it from \$455 a week to \$913 a week (\$47,476 for a full-year worker). This means that 35 percent of full-time salaried workers will be automatically entitled to overtime, based solely on their salary.
 - **Highly Compensated Employees (HCE) salary level.** The rule also updates the total annual compensation level above which most white collar workers will be ineligible for overtime. The final rule raises this level to the 90th percentile of full-time salaried workers nationally, or from the current \$100,000 to \$134,004 a year.
- **Automatic updates.** Every year that the threshold remains unchanged, it covers fewer and fewer workers as wages overall increase over time. The Department’s final rule will fix this by automatically updating the salary threshold every three years, beginning January 1, 2020. Each update will raise the standard threshold to the 40th percentile of full-time salaried workers in the lowest-wage Census region, estimated to be \$51,168 in 2020. The HCE threshold will increase to the 90th percentile of full-time salaried workers nationally, estimated to be \$147,524 in 2020. The Department will post new salary levels 150 days in advance of their effective date, beginning August 1, 2019.
- **Bonuses, incentive payments, and commissions.** The final rule will allow up to 10 percent of the salary threshold for non-HCE employees to be met by non-discretionary bonuses, incentive pay, or commissions, provided these payments are made on at least a quarterly basis. This recognizes the importance these forms of pay have in many companies’ compensation arrangements, particularly for managerial employees affected by the final rule. This is a new policy that responds to robust comments received from the business community on this matter.

- **Duties test.** The final rule does not make any changes to the “duties test” that determines whether white collar salaried workers earning more than the salary threshold are ineligible for overtime pay. But fewer employers and workers will have to worry about its application because the higher salary threshold means more workers’ entitlement to overtime pay will be clear just from their salaries. For workers with salaries above the updated salary level, employers will continue to use the same duties test to determine whether or not the worker is entitled to overtime pay.

Impacts of the rule:

- **Workers directly affected.** 4.2 million salaried workers will be affected by this rule based on their salaries. These workers are currently ineligible for overtime. The Department 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.
 - o Most of these workers will be affected by the standard salary level. However, 65,000 will be affected due to the HCE level alone; of those, 64,000 will become newly eligible for overtime while 1,000 will remain exempt because their employers are expected to raise their salaries above the new HCE threshold.
- **Workers indirectly affected.** 8.9 million salaried workers (3.2 million blue collar and 5.7 million white collar workers) are currently eligible for overtime because, although their salaries are above the current salary threshold, their duties do not meet the exemption for executive, administrative, or professional workers. Under the final rule, their eligibility for overtime will become clearer because their salaries will fall below the new threshold—and no assessment of their duties will be necessary. Of the 5.7 million white collar workers, approximately 732,000 are overtime-eligible, but their employers don’t recognize them as such and so do not pay them the overtime they deserve when they work more than 40 hours. This update will give all of these workers the peace of mind in knowing they are properly classified as eligible for overtime.
- **More income for working Americans.** As a result of this rule, an extra \$1.2 billion a year will go into workers’ pockets (those earning between \$455 and \$913 a week). These benefits will flow to many middle class workers and their families.
 - o More than half (56 percent) of affected workers are women.
 - o 61 percent are age 35 or older.
 - o 82 percent have at least some college, and more than half (53 percent) have a college degree or more.
 - o In addition, 2.5 million children have at least one parent who will gain overtime protections or get a salary raise.
- **More appropriate salary threshold.** While the current threshold (\$455) is less than the poverty level for a family of four and just 1.6 times the federal minimum wage, the new standard salary is much more appropriately set. It will be 3.1 times the federal minimum wage for a full-time worker and twice the poverty level for a family of four.

For more information on the Overtime Final Rule, see www.dol.gov/overtime.

U.S. Department of Labor
Wage and Hour Division



U.S. Wage and Hour Division
(Revised July 2008)

The Department announced a Final Rule focused primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. For more information, see <http://www.dol.gov/whd/overtime/final2016/>.

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, computer and outside sales employees, and for more information on the salary basis requirement.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be 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; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

* Weekly wage rate to change to \$913 on December 1, 2016

Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
 - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the

** Highly Compensated Compensation to change to \$134,000 effective Dec. 1, 2016.*

FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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