

2016 FLSA Final Ruling - Questions and Answers

Q. When is the change effective?

A. Employers must be in compliance by December 1, 2016.

Q. Why is the overtime regulation being revised now?

A. The overtime regulations were last updated in 2004. On March 13, 2014, President Obama signed a Presidential Memorandum directing DOL Wage & Hour to update and modernize the regulations. It will extend overtime pay protections to over 4 million workers within the first year of implementation.

Q. What is the salary change for an employee to be considered exempt?

A.

	From	To
Minimum Salary (part-time or full-time)	\$455/week	\$913/week
	\$23,660/year	\$47,476/year

Q. Has there been any change to the definition of “salary”?

A. Yes – up to 10% of the minimum salary level may be paid through “nondiscretionary” bonuses, incentive pay or commissions (i.e., where the employer offers this type of pay on a regular basis and an employee has come to recognize and expect it as part of their overall salary). These types of payments must be paid quarterly, and any shortfall in meeting the minimum salary for the quarter must be made up by no later than one pay period after the quarter end. For example:

Employee’s base pay is	\$850 per week
Minimum salary is	\$913 per week
Shortfall is	\$63 per week or \$819 per quarter
Employee also receives quarterly incentive pay of	\$700
Shortfall for the quarter to maintain exempt status is	\$119

Q. Has anything changed in the exemption qualifications?

A. No - exemptions still must meet the following criteria as revised in 2004:

- | | | |
|---------------------------------|---|-----------------------------------|
| ✓ Duties tests | <i>For positions considered...</i> | • Executive |
| ✓ Paid on a salaried basis | | • Administrative |
| ✓ Meet minimum salary threshold | | • Professional
• Outside Sales |

Executive	Administrative	Professional	Outside Sales
<ul style="list-style-type: none"> ➤ Primary duty is management of the enterprise or subdivision ➤ Directs the work of 2 or more employees ➤ Authority to hire or fire or make recommendations carrying particular weight ➤ May perform duties concurrently 	<ul style="list-style-type: none"> ➤ Primary duty: <ul style="list-style-type: none"> ▪ Office or non-manual work ▪ Directly related to management or general business operations ▪ Exercise of discretion and independent judgment 	<ul style="list-style-type: none"> ➤ Learned professionals ➤ Creative professionals ➤ Other traditional professionals 	<ul style="list-style-type: none"> ➤ Primary duty: <ul style="list-style-type: none"> ▪ Making sales or ▪ Obtaining orders or contracts for services or for the use of facilities ➤ Employed away from the employer's place of business

Q. What are our options for addressing the salary gap along with the pros and cons:

A. Options are outlined below. ADOA will be in communication with agencies to provide guidance and support in making these determinations.

Options	Pros	Cons
1. For employees who meet the "duties" test to be designated as exempt, increase salaries to meet the new \$47,476 minimum.	<ul style="list-style-type: none"> ▪ Quick fix 	<ul style="list-style-type: none"> ▪ Budget Limitations ▪ In some cases may result in salary compression where an employee's salary is close to the manager's salary.
2. For employees who do <u>not</u> meet the exempt duties test, re-designate them as non-exempt and either <ul style="list-style-type: none"> a. Eliminate overtime or b. Pay them overtime or comp time for hours worked over 40 in a work week. 	<ul style="list-style-type: none"> ▪ No salary increases required 	<ul style="list-style-type: none"> ▪ Budget impact from unanticipated overtime cost. ▪ Reassessment of workload with fewer exempt staff. ▪ Formerly exempt staff will now have to track their start times, end times, break times and meal times. ▪ Managers will need to monitor OT, including use of company

		<p>phones, laptops, checking v-mail and e-mail after hours, etc.</p> <ul style="list-style-type: none"> ▪ Telecommuting and time tracking considerations. ▪ Some employees may view their new nonexempt status as a demotion.
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Q. If we have a job that meets the exempt duties test, can we re-designate only those who are below the new minimum to non-exempt and allow those that are over to remain exempt? Or, does the entire classification need to be exempt or non-exempt?

A. The "white collar" exemptions require an employee to be paid on a salary basis, paid above a certain salary level, and meet the respective duties test. If an employee meets the duties test of an executive, administrative, or professional employee, and meets the salary basis requirement, and meets or exceeds the salary level requirement, they would meet the requirements for the exemption. If they fail to meet any part of the criteria, they would not meet the exemption and would therefore be non-exempt. The exemption is applied on an employee by employee basis, not to a particular classification.

Q. What is the salary requirement for part time salary workers?

A. Whether a worker is full-time or part-time, the standard salary level to qualify for exemption will be \$913 per week.

Q. Can an employee make, for example, \$60,000 annually and still be a non-exempt employee? Or once an employee reaches the new salary level of \$47,476 they are automatically a salaried exempt employee?

A. To qualify for exemption, employees generally must pass tests regarding their earnings and job duties. So, yes, an employee who does not satisfy the applicable duties requirements will not qualify for exemption regardless of how much they earn.

Q. Any changes in the salary requirements for non-exempt workers?

A. No

Q. If we have managers who meet the test for the executive duties, does this exempt them from the overtime pay if they make under the newly required \$913/per week rate?

A. An exempt executive, administrative, and professional employee must meet the duties test in addition to being paid on a salary basis and at the required salary level. Therefore, if an employee only meets the duties test and not the required salary level, they would not meet the criteria necessary to be considered exempt, and would be entitled to overtime in any week they work more than 40 hours.

Q. How will the changes be communicated to employees?

A. ADOA will provide agencies with a template for preparing communications to staff.

Q. Will DOL be considering another minimal salary increase anytime soon?

A. Yes – every three years with the next increase effective January 1, 2020. DOL will provide notice 150 days in advance. Following are their rough projections for estimated increases from 2017-2020:

Year	Minimum Salary Level	HCE Level
2017	47,476	134,004
2020	51,168	147,524
2023	55,148	162,409
2026	59,437	178,795
2029	64,060	196,835
2032	69,042	216,694
2035	74,411	238,558