

## Final DOL Overtime Rule

The DOL released a final rule that radically increases the thresholds for overtime rules, expanding the number of employees eligible for overtime pay. Under the FLSA, employees who work more than 40 hours in a week are entitled to overtime pay, unless they meet the new rule requirements of certain wage and duties tests. This Rule goes into effect December 1<sup>st</sup>, 2016.

This new rule affects the following employees: Executive, Administrative, Professional, Outside Sales & Computer Employees. Here is a brief description of these changes:

- Sets the new standard salary threshold to \$913 per week or \$47,476 annually (up from \$455/week) – the Executive, Administrative, Professional, Executive (EAP or “white collar” exemption)
- Allows up to 10% of the salary threshold to be met by non-discretionary bonuses, incentive pay, or commissions
  - These payments must be made on an *at least* quarterly basis.

**\*NOTE- Implementation is delayed pending the outcome of a judicial injunction**

## HCE Salary Exemption Changes:

- Sets the new highly compensated employee (HCE) exemption at \$134,004 up from \$100,000.

Worker Type	Current Threshold	Final Rule
Hourly	<i>Nonexempt</i>	No change
Salaried: Executive, Administrative Professional (EAP or “white collar” exemption)	More than \$23,660 <i>Exempt</i>	More than \$47,476 <i>Exempt</i>
	Less than \$23,660 <i>Nonexempt</i>	Less than \$47,476 <i>Nonexempt</i>
Salaried: Highly Compensated Employee (HCE)	Less than \$100,000 <i>Nonexempt</i>	Less than \$134,004 <i>Nonexempt</i>
	More than \$100,000 <i>Exempt</i>	More than \$134,004 <i>Exempt</i>

The Final Rule did not make any changes to Duties Test, Examples of job duties for each employee.

### Executive Duties

- Primary duty is management of enterprise or customarily recognized department or subdivision

- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees.

#### Administrative Duties

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

#### Professional Duties

- Performance of work requiring knowledge of advance type in a field of science or learning customarily acquired by a prolonged course
- Performance of work requiring invention, imagination, originality, or talent in recognized field of artistic or creative endeavor.

#### Agricultural Exemptions

- Agricultural work is exempt from overtime. However, this work needs to be “directly” related to the farming process. Generally, work performed on the farm for management or administrative purposes does not count as being exempt from overtime.
  - *Example:* Someone who drives a tractor full-time is exempt, but the farm bookkeeper is not exempt.
- Non-farm work done by farm employees may still be exempt under other standards. Usually, most management and administrative functions will be exempt; however, they are only exempt if their annual salary falls over a certain level.
  - The same new rule applies if an agricultural employee is indirectly related to farming.
- **In order to not pay overtime, the employee must perform an exempt function AND have a salary over the required level.**
- If an Ag employee is directly related to farming, they will still need to be paid hours work.
  - Example:* If an Ag employee works 47 hours a week he will get paid 47 hours.

#### **Links to Several DOL Publications Related to the Final Rule**

*Final Rule Link: [here](#)*

*DOL Fact Sheet: [here](#)*

*DOL Overview and Summary: [here](#)*

*DOL Frequently Asked Questions Page: [here](#)*

*DOL White Paper/Fact Sheet on Non-Profit Sector: [here](#)*

*DOL's Guidance for Businesses: [here](#)*

*DOL's Guidance for Non-Profit Sector: [here](#)*

*DOL Fact Sheet on the E, A, P or “white collar” Exemption: [here](#)<sup>1</sup>*