



Guidance for Private Employers on Changes to the White Collar Exemptions in the Overtime Final Rule

May 18, 2016

Introduction

The Department of Labor's ("Department") Final Rule on Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees under the Fair Labor Standards Act (FLSA) (the "Overtime Rule" or "Final Rule") updates the salary level required for the executive, administrative, and professional ("white collar") exemption to ensure that the FLSA's intended overtime protections are fully implemented, and to simplify the identification of overtime-exempt employees. The Final Rule strengthens overtime protections and provides greater clarity for workers and employers across a wide range of sectors. Employers, however, are not required to pay minimum wages or overtime to executive, administrative, and professional employees who satisfy the salary level and other requirements to meet one of the white collar exemptions. The Department is issuing this guidance on the application of the white collar exemptions at the same time as publication of the Final Rule in order to help private sector employers evaluate current practices and transition to the requirements of the Final Rule.

In the Final Rule, the Department updated the salary level above which certain "white collar" workers may

be exempt from overtime pay requirements to equal the 40th percentile of earnings of full-time salaried workers from the lowest wage Census Region. This change raises the salary level from its previous amount of \$455 per week (the equivalent of \$23,660 per year) to a new level of \$913 per week (the equivalent of \$47,476 per year). Salaried white collar employees paid below the updated salary level are generally entitled to overtime pay, while employees paid at or above the salary level may be exempt from overtime pay if they primarily perform certain duties. The Final Rule also raises the compensation level for highly compensated employees subject to a more minimal duties test from its previous amount of \$100,000 to \$134,004 annually. These changes take effect on December 1, 2016. The Final Rule also establishes a mechanism for automatically updating the salary and compensation levels every three years, with the first update to take place in 2020. The Final Rule does not include any changes to the duties tests, which also affect the determination of who is exempt from overtime.

In view of the changes introduced by the Final Rule to the salary level in particular, the Department is providing this guidance to assist employers in preparing for implementation of the Final Rule. Part I of this guidance provides a brief background on the FLSA's white collar exemptions and how they apply generally.

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Part II details some of the options employers may exercise in determining how best for their organizations to ensure that they comply with the Final Rule. This guidance, however, is not a comprehensive guide to coverage and compliance under the FLSA. For additional, detailed guidance documents, please visit the Wage and Hour Division's website at dol.gov/whd.

I. Considerations for Applying the White Collar Exemptions

A review of the baseline white collar exemption requirements will help clarify what has changed as a result of the Final Rule. In the Final Rule, among other things, the Department updated the salary level from its previous amount of \$455 per week (the equivalent of \$23,660 per year) to \$913 per week (the equivalent of \$47,476 per year). The salary level is one of three tests for determining whether employees employed as executive, administrative, or professional employees are exempt from the FLSA's minimum wage and overtime requirements. *See* 29 U.S.C. 213(a)(1); 29 CFR Part 541. These exemptions are sometimes referred to collectively as the "white collar" exemptions. The Final Rule also made changes to the highly compensated employee exemption and how bonuses are treated for purposes of determining an employee's exempt status. For guidance on these issues or for additional information on the Final Rule visit dol.gov/whd/overtime/final2016/.

Establishing that a white collar employee is exempt from the FLSA's minimum wage and overtime requirements involves assessing how the employee is paid (salary basis test), how much the employee earns (salary level test), and whether the employee primarily performs the kind of job duties that Congress meant to exclude from the law's overtime protections (duties test). Job titles never determine exempt status under the FLSA. Additionally, receiving a particular salary, alone, does not indicate that an employee is exempt from overtime and minimum wage protections. Rather, in order for a white collar exemption to apply, an employee's specific job duties and earnings must meet all of the applicable requirements provided in the regulations. Not all salaried white collar employees qualify for the white collar exemptions; in fact, many salaried white collar employees are entitled to minimum wage and overtime.

A. Three Tests Must Be Met in Order to Claim a White Collar Exemption

The regulations implementing the white collar exemptions generally require individuals to satisfy three criteria to be exempt from overtime requirements:

- First, they must be paid on a salary basis not subject to reduction based on quality or quantity of work ("salary basis test") rather than, for example, on an hourly basis;
- Second, their salary must meet a minimum salary level, which after the effective date of the Final Rule will be \$913 per week, which is equivalent to \$47,476 annually for a full-year worker ("salary level test"); and
- Third, the employee's primary job duty must involve the kind of work associated with exempt executive, administrative, or professional employees (the "standard duties test").

The salary level is not a minimum wage requirement, and no employer is required to pay an employee the salary specified in the regulations, unless the employer is claiming an applicable white collar exemption. Administrative and professional employees may also be paid on a "fee basis." *See* 29 CFR 541.605. For additional information about payment on a fee basis, *see*

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Overtime-eligible employees may be paid a salary and do not need to be paid on an hourly basis. That is, **salaried workers may be eligible for overtime.**

WHD Fact Sheet 17G.

Note that the discussion in this guidance focuses on the standard exemption. For additional information on the highly compensated employee exemption, which pairs a more relaxed duties test with a higher total earnings level (\$134,004 per year, beginning on December 1, 2016), see **WHD Fact Sheet 17H.**

B. Primary Job Duties for Exempt Executive, Administrative, and Professional Employees

The duties tests remain unchanged under the Final Rule. These tests are summarized below.

Professional Exemption. There are several different kinds of exempt “professional” employees. These include “learned professionals,” “creative professionals,” teachers, and employees practicing law or medicine. Under the Final Rule, exempt professional employees must receive at least \$913 a week (the equivalent of \$47,476 a year) on a salary or fee basis (compared to \$455 a week under the old rule), and must primarily perform work that either requires advanced knowledge in a field of science or learning, usually obtained through a degree, or that requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Many businesses may employ certain professionals who will be unaffected by the new salary level. Specifically, the salary level and salary basis requirements do not apply to teachers, lawyers, or doctors (“bona fide practitioners of law or medicine”). See **WHD Fact Sheet 17D.**

Example: A business hires an attorney with a law degree to work in its General Counsel’s office. The

attorney performs legal work for the business. The attorney is a bona fide professional, exempt from the FLSA’s provisions, regardless of whether she is paid on a salary basis or meets the salary level.

Administrative Exemption. To qualify for the administrative exemption, an employee must receive at least \$913 a week (the equivalent of \$47,476 a year) on a salary or fee basis, and 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. Additionally, the employee’s primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. See 29 CFR 541.203 for examples, and **WHD Fact Sheet 17C.** for additional information.

Executive Exemption. To qualify for the executive exemption, an employee must receive compensation on a salary basis of not less than \$913 per week (the equivalent of \$47,476 a year), and have the primary duty of managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise. Additionally, the employee must customarily and regularly direct the work of at least two other full-time employees or their equivalent (for example, one full-time and two half-time employees are equivalent to two full-time employees), and 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. See **WHD Fact Sheet 17B.**

Example: A maintenance department, which is responsible for maintaining the buildings and grounds of a large technology company, employs a groundskeeping crew lead. The crew lead coordinates the work of three groundskeepers and

The salary level is not a minimum wage requirement, and no

employer is required to pay an employee the salary specified in the regulations, unless the employer is claiming an applicable white collar exemption.

makes recommendations for their terminations and promotions. The crew lead earns \$38,000 a year (\$731 per week) on a salary basis. The crew lead does not meet the new salary level, and therefore is eligible for overtime compensation when the crew lead works more than 40 hours a week. The facility does not need to determine whether the crew lead meets the duties test, because the crew lead does not pass the salary test.

For more information on all of the white collar exemptions, see **WHD Fact Sheet 17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees under the Fair Labor Standards Act (FLSA)**.

II. Options for Compliance for Employers Who Might be Impacted by the Final Rule

Employers have a wide range of options for responding to the changes to the salary level, and the Department does not dictate or recommend any method. Organizations may ensure compliance for those employees affected by the Final Rule in a number

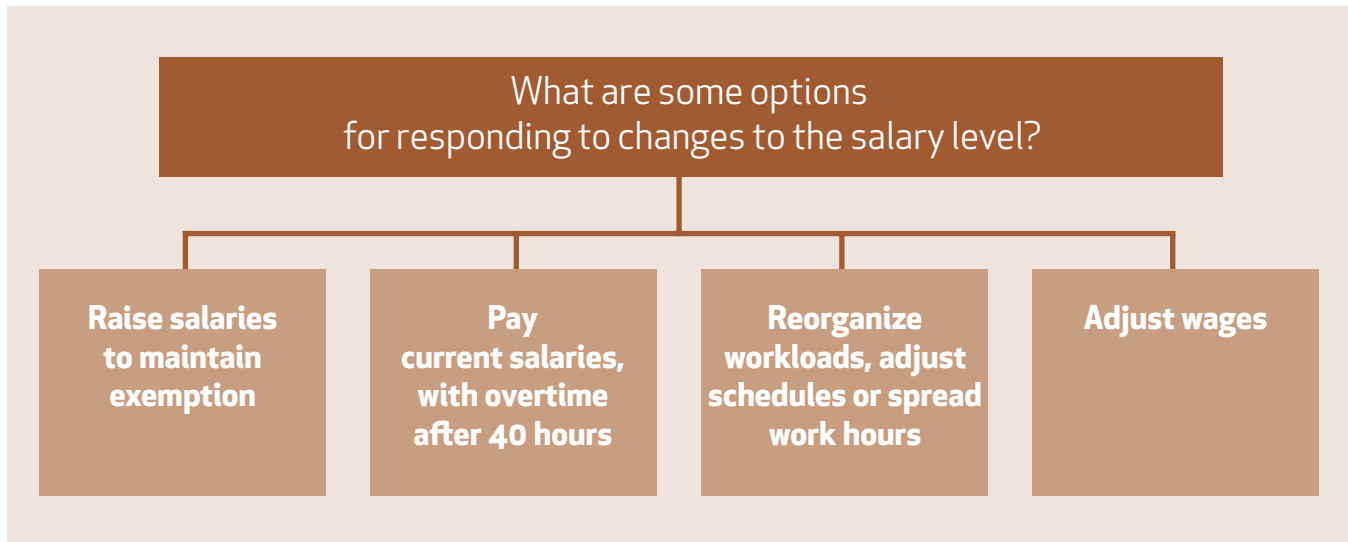
Basic Requirements for Claiming a White Collar Exemption under the Standard Duties Test

	EXECUTIVE	ADMINISTRATIVE	PROFESSIONAL
Salary Basis Test	<ul style="list-style-type: none"> Employee must be paid on a salary basis 	<ul style="list-style-type: none"> Employee must be paid on a salary or fee basis 	<ul style="list-style-type: none"> Employee must be paid on a salary or fee basis
Standard Salary Level Test	<ul style="list-style-type: none"> \$913 per week (\$47,476 per year for a full-year worker) 	<ul style="list-style-type: none"> \$913 per week (\$47,476 per year for a full-year worker) Special salary level for certain academic administrative personnel 	<ul style="list-style-type: none"> \$913 per week (\$47,476 per year for a full-year worker) Salary level test does not apply to doctors, lawyers, or teachers
Standard Duties Test	<ul style="list-style-type: none"> The employee’s “primary duty” must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise (and managing 2 full-time employees as well). Additional requirements provided in 29 CFR 541 Subpart B 	<ul style="list-style-type: none"> The employee’s “primary duty” must include the exercise of discretion and independent judgment with respect to matters of significance. Additional requirements provided in 29 CFR 541 Subpart C 	<ul style="list-style-type: none"> The employee’s “primary duty” must be to primarily perform work that either requires advanced knowledge in a field of science or learning or that requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. Additional requirements provided in 29 CFR 541 Subpart D

of ways, including providing pay raises that increase workers' salaries to the new threshold, spreading employment by reducing or eliminating work hours of individual employees working over 40 hours per week for which no overtime is being paid, or paying overtime. This rule does not require employers to convert a salaried worker making less than the new

effect on these employees' pay because they do not work any overtime even though they will become overtime-protected. They can continue to be paid a salary as before.

Example: An office manager performs the duties of a bona fide administrator and is paid a fixed salary of \$42,000 a year. The manager regularly works



salary threshold to hourly status: employers can pay non-exempt employees on a salary basis and pay overtime for hours worked beyond 40 in a week. As long as they are complete and accurate, employers may use any method they choose for tracking and recording hours. The method for compliance, which is entirely within each employer's discretion, will likely depend on the circumstances of that organization's workforce, including how much employees currently earn and how often employees work overtime, and may include a combination of responses, such as paying overtime and adjusting employees' hours and schedules. Some potential responses are discussed below.

A. Numerous Options for Compliance

- i. After evaluation, no changes to pay or hours necessary

Many organizations may have white collar employees who satisfy one of the duties tests for exemption and earn between the old salary level (\$455 per week) and the new salary level (\$913 per week). Employers should evaluate all such categories of white collar employees to determine which employees do not work more than 40 hours per workweek. The Final Rule will have no

from 9am-5pm, Monday through Friday. Because of the change in the salary level, the manager is no longer an exempt employee. Nevertheless, the Final Rule has no impact on the manager's pay, because the manager does not work more than 40 hours in a given week. The office can continue to pay the manager a fixed salary of \$42,000 a year.

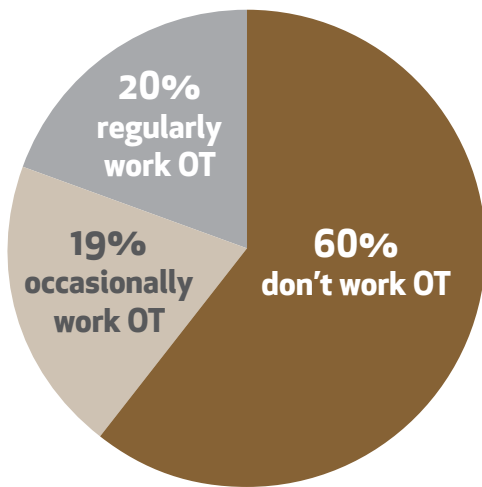
- ii. Raise salaries

Employers may choose to raise the salaries of employees who meet the duties tests, whose salaries are close to the new salary level, and who regularly work overtime, to at or above the salary level to maintain their exempt status.

Example: An operations manager at an international corporation is paid a salary of \$45,000 a year. Her job duties qualify her for the administrative exemption. The manager's job requires regularly working overtime to direct business operations in multiple time zones. The employer may choose to raise the manager's salary to at or above \$47,476 a year to maintain the manager's administrative exemption.

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Most affected employees do not work overtime (OT)



**Totals don't sum to 100 due to rounding. For more information, please see Section VI of the Final Rule.*

iii. Pay overtime above a salary

Employers also can continue to pay employees a salary and pay overtime for hours in excess of 40 per week. Although the FLSA requires employers to keep records of how many hours overtime-eligible employees work, the law does not require that overtime-eligible workers be paid on an hourly basis. Rather, employers may continue to pay employees a salary covering a fixed number of hours, which could include hours above 40. There are several ways to pay a salary and pay overtime.

An employer might pay employees a salary for the first 40 hours of work per week, and then pay overtime for any hours over 40. Employers may choose to do this, for example, for employees who work 40 hours per week and do not frequently work overtime, or who do not consistently work the same amount of overtime.

Example: Alexa, a manager at an advertising agency, earns a fixed salary of \$41,600 per year (\$800 per week) for a 40 hour workweek. Because her salary is for 40 hours per week, Alexa's regular rate is \$20 per hour. If Alexa works 45 hours one particular week, the employer would pay time and one-half (overtime premium) for five hours at a rate of \$30 per hour. Thus, for that week, Alexa should be paid \$950, consisting of her \$800 per week salary and \$150 overtime compensation.

Employers also have the option of paying a straight time salary for more than 40 hours in a week for employees who regularly work more than 40 hours, and paying overtime in addition to the salary. Using this method, the employer will only be required to pay an additional half time overtime premium for overtime hours already included within the salary, and time and a half for hours beyond those included in the salary.

Example: Jamie, an HR manager at a catering company, earns a fixed salary of \$44,200 per year (\$850 per week) for a 50 hour workweek. The salary does not include the overtime premium. Because the salary is for 50 hours per week, Jamie's regular rate is \$17 (\$850/50). In a normal 50 hour week, the employer would pay Jamie the additional half time overtime premium for the 10 hours of overtime (\$8.50/hour). If Jamie worked more than 50 hours in a week, the employer would also owe overtime compensation at time

Employers can also pay non-exempt employees on a salary basis and pay overtime for hours worked beyond 40 in a week. As long as they are complete and accurate, **employers may use any method they choose for tracking and recording hours.**

Many organizations may already have systems in place for tracking non-exempt employees' hours. These **existing systems can be used for newly overtime-protected employees impacted by the Overtime Rule.**

and a half the regular rate (\$17 x 1.5) for hours beyond 50 (because the salary does not cover any payment for those hours).

It is also possible for an employer and employee to agree to a fixed salary for a workweek of more than 40 hours, in which the salary includes overtime compensation under certain conditions. If, however, the employee's schedule changes in any way during any week (either by working more or fewer hours), the employer must adjust the salary for that week. Employees must be paid based on the hours actually worked during the workweek. This method of paying for overtime, therefore, might be most helpful for employees who consistently work the same amount of overtime every week.

Example: Andre, a manager on a construction project, has an agreement with his company where he is paid a fixed salary of \$39,520 per year (\$760 per week) for a 45 hour workweek. The fixed salary includes both straight time for the first 40 hours (\$16 regular rate x 40 hours) and overtime compensation for hours 41-45 (\$24 overtime rate x 5 hours). If Andre's schedule changes in any way for any week, his salary needs to be adjusted to reflect the hours actually worked for that week.

Finally, where employees have hours of work which fluctuate from week to week, employers can pay a fixed salary that covers a fluctuating number of hours at straight time if certain conditions are met, including a clear mutual understanding between the employer and employee. See 29 CFR 778.114 for additional information and criteria for this payment method.

Any overtime-eligible employee may continue to be paid a salary, provided that overtime compensation is also paid and appropriately documented in the employer's record. Many organizations may already have systems in place for tracking non-exempt employees' hours. These existing systems can be used for newly overtime-protected employees impacted by the Overtime Rule. As long as they are complete and accurate, employers may use any method they choose for recording hours. Employers may use their own system to keep track of employees' work hours or require employees to enter their own time into payroll programs. See **WHD Fact Sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act (FLSA)**.

There is no requirement that employees "punch in" and "punch out." An employer does not need to require an employee to sign in each time she starts and stops work. The employer must, however, keep an accurate record of the number of daily hours worked by the employee. To do so, an employer could allow an employee to just provide the total number of hours worked each day, including the number of overtime hours, by the end of each pay period. For employees who work a fixed schedule, an employer need not track the employee's exact hours worked each day; rather, the employer and employee can agree to a default schedule that reflects daily and weekly hours, and indicate that the employee followed the agreed-upon schedule, if that is true. Only when the employee deviates from the schedule is the employer required to record the number of hours worked each day. Many employees, both exempt and non-exempt, track their daily and weekly hours by simply recording their hours worked for the employer.

iv. Reorganize Workloads, Adjust Schedules or Spread Work Hours

Employers may wish to reorganize workload distributions or adjust employee schedules in order to comply with the Final Rule. For example, work assignments that are predictable could be assigned at the beginning of the workweek (rather than, for instance, late in the day on Friday for an employee who typically works Monday–Friday) in order to manage overtime hours. Or, when employees regularly perform duties outside of a 9 to 5 workday, organizations may

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consider adjusting those employees' schedules to encompass when most of the work takes place, so that they will not work more than 40 hours each workweek. (The FLSA does not specify days or schedules, such as a Monday–Friday workweek or a 9 to 5 workday; this is provided only as an example of a schedule that many workers follow.)

Example: John, a manager for a local hardware store who satisfies the duties test for the executive exemption, currently begins work at 9am Monday–Friday. Under the Final Rule's new salary level, he would be newly entitled to overtime compensation. Among other duties, John works until the store closes at 7pm. The store may wish to adjust John's schedule such that he doesn't need to begin work until 10am, thus limiting the number of overtime hours he works.

To reduce or eliminate overtime hours, employers may decide to hire new employees or redistribute work hours in excess of 40 across current staff, such as by increasing the work hours of staff who work less than 40 hours per week.

v. Adjust Wages

Employers can adjust the amount of an employee's earnings to reallocate it between regular wages and overtime so that the total amount paid to the employee remains largely the same. Employers may not, however, reduce an employee's hourly wage below the highest applicable minimum wage (federal, state, or local), or continually adjust wages each workweek in order to manipulate the regular rate. The employees' hours worked must still be recorded, and overtime must be paid according to the actual number of hours worked each week.

Example: Assume a supervisor at a private gym who satisfies the duties test for the executive exemption earns \$37,000 per year (\$711.54 per week). The supervisor regularly works 45 hours per week. The employer may choose to instead pay the employee an hourly rate of \$15 and pay time and one-half for the 5 overtime hours worked each week.

\$600.00 (40 hours x \$15 / hour)

+ \$112.50 (5 OT hours x \$15 x 1.5)

\$712.50 per week

Alternatively, the employer may choose to pay that employee a salary for 40 hours of \$600 per week and pay the overtime for hours in excess of 40 per week.

\$600.00 (salary for 40 hours/week, equivalent to \$15/hour)

+ \$112.50 (5 OT hours x \$15 x 1.5)

\$712.50 per week

Conclusion

The overtime rule updated the regulations to ensure that the FLSA's intended overtime protections are fully implemented, and to simplify the identification of overtime-eligible workers, making the exemption easier for employers and workers to understand and apply. This guidance is provided to help employers understand their responsibilities and options for complying with the FLSA's overtime provisions following publication of the Final Rule.

For additional information, please visit www.dol.gov/whd.