



FLSA Overtime Final Rule:

What You Need to Know and Do Now



The New Rules *What Do They Say?*

- ▶ Standard Salary Level Increased By More Than 100%
- ▶ New annualized salary level will be \$47,476
 - ▶ This is \$913/week
- ▶ Allows up to 10% of the minimum salary to be met by non-discretionary bonuses, incentive pay or commissions, if made at least on quarterly basis



No Changes to the Duties Tests

- ▶ In the Final Rule, DOL does not make any changes to the duties tests
- ▶ Nor are there any changes to the salary basis test
 - ▶ As under the existing regulations, there still are no exceptions or allowances for: part-time employees
 - ▶ Employees of non-profits, colleges or universities, or public entities



Employers Have More Than Five Months to Comply

- ▶ Effective date is December 1, 2016
 - ▶ Any upward salary adjustments must be in place before that date to ensure continued application of exempt status Note that December 1 is a Thursday
 - ▶ For bi-weekly pay, employers will need to adjust pay for pay period that includes December 1, 2016



Part-Time Exempt Employees

- ▶ Except for limited circumstances (doctors, lawyers, teachers, certain academic administrators), FULL salary level is required
- ▶ Means anyone earning below \$47,476 is NONEXEMPT
Track hours
- ▶ The regulation is monitored per work week (40 hours max) Meaning: You can't work 50 hours one week and 30 the next for an average of 40.
- ▶ Overtime pay



Partial-Year Employees

- Assume coach works a ten-month schedule, but receives paychecks over a twelve-month period. Amount of the checks may be prorated over the actual period of work (i.e., ten months) to determine whether she is paid at least the salary threshold.
- If a 9-month employee earns \$45,000 for 9 months, but is paid over 12 months, he would meet the salary requirement because his 9-month weekly salary is \$1,153.85 ($\$45,000/39$ weeks), even though his weekly paycheck is \$865.38 ($\$45,000/52$ weeks).
- Similar calculation can be used for 10-month employees.
- It is critical that the employee perform **no work** outside of the 9- or 10-month period.



Reclassified employees become **NONEXEMPT** employees

- ▶ This means that, regardless of the method of pay, they are subject to the same wage & hour rules as other non-exempt employees: Must maintain accurate time records (even if no OT worked)
 - ▶ Must ensure proper control of employee work, such as: Off-the-clock
 - ▶ Meal and rest breaks
 - ▶ Travel time
 - ▶ Remote access
 - ▶ Must pay OT premium for hours work in excess of 40/week
 - ▶ No method of compensation permits an employer to avoid keeping accurate time records for non-exempt employees
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Restructuring Impact

- ▶ To justify increased exempt employee salaries, some jobs will need to take on more responsibilities
 - ▶ To avoid reclassification, some jobs will need to shed nonexempt responsibilities
 - ▶ Some jobs will need to be split into two or more roles because overtime costs would be too great
 - ▶ Some jobs and employees will necessarily be phased out
 - ▶ As predicted by many critics of the new rule, some businesses will need to close locations, departments, and other aspects of their operations
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