

## 7 FAQs about the new FLSA Overtime Rule

With December 1<sup>st</sup> less than 30 days away, our HR Professionals have been inundated with phone calls about the new overtime rule. Below is a list of the top questions we have received.

**1. In light of the pending legislation in Congress and two lawsuits challenging the new FLSA Overtime Rule, do I still have to comply with the new rule by December 1<sup>st</sup>?**

Employers should not rely on these challenges to stop the new FLSA Overtime Rule from going into effect. It is imperative that employers continue to work out their compliance strategy and plan to be in compliance with the new rule by December 1<sup>st</sup>.



**2. What are the changes made with the new overtime rule?**

The new overtime rule increases the minimum salary requirement for the administrative, professional, executive, and highly compensated employee exemptions as follows:

<b>Administrative, Professional, and Executive Exemptions</b>		
	<b>Current Level</b>	<b>New Overtime Rule Level</b>
<b>Weekly Salary</b>	\$455	\$913
<b>Yearly Salary</b>	\$23,660	\$47,476

<b>Highly Compensated Employee (“HCE”) Exemption*</b>		
	<b>Current Level</b>	<b>New Overtime Rule Level</b>
<b>Yearly Salary</b>	\$100,000	\$134,004

\* NOTE, some states do not recognize the HCE exemption

**3. My state has its own rules for exemption from overtime. Does the new overtime rule affect me?**

That depends on state’s rules for exemption from overtime. If a state establishes a more protective standard than the provisions of the FLSA, the higher standard applies in that State.

However, to the extent the new minimum salary amount of \$913 per week under the new overtime rule is higher than the state requirement, the employer in that state must comply with the higher standard and pay not less than \$913 per week for an exempt white collar employee.

**4. If an employee satisfies the duties test for the exemption, but is making less than the new minimum salary, can they still be considered exempt?**

No. Employees must satisfy both the duties requirement and the minimum salary requirement in order to receive the exempt classification.

Keep in mind, this also means that if employees satisfy the new salary requirements, but do not satisfy the duties test, then they may not be classified as exempt. Therefore, when classifying employees, it is imperative that employers verify that exempt employees meet all of the following tests:

- The employee must be paid on a salary basis, meaning the employee must receive his or her full salary in any workweek in which the employee performs work (regardless of the quality or quantity of that work);
- The salary must meet or exceed the minimum requirements for exemption; and
- The employee must perform specific job duties. Each [type of exemption](#) has its own set of primary duties that an employee must perform in order to qualify for the exemption.

**5. Does the new overtime rule affect my outside sales people?**

No, the new rule does not affect those employees who are exempt from the FLSA’s minimum-wage and/or overtime provisions. These employees include:

- Certain “white collar” employees, like
  - Salespeople who fall within the “outside salesman” [exemption](#);
  - Employees who qualify for the “teaching professional” [exemption](#);
  - [Employees](#) who are authorized to practice law who are actually practicing law (i.e. practicing lawyers);
  - [Employees](#) who are authorized to practice medicine or any of its branches who are actually engaged in the relevant practice (i.e. practicing doctors);
  - [Employees](#) who have a medical degree and are working in a medical internship or residency;
  - Employees whose work meets the computer-employee [exemption](#) requirements who are paid on an hourly basis at a rate of at least \$27.63.
- Retail employees paid under a qualifying commission pay plan (who are already exempt from overtime under the FLSA)
- Any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers (who are already exempt from overtime under the FLSA)
- Employees who fall under the FLSA’s “Motor Carrier Exemption”

**6. May employers use bonuses or incentives to satisfy part of the new minimum salary requirement?**

Yes, under the new rules, employers can use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the minimum salary requirement. Please be advised that in order to do this, such payments must be paid on a quarterly or more frequent basis.

This amounts to the following quarterly salary breakdown:

New Exempt Minimum Salary =	\$11,869.00
Maximum credit for incentive pay (10%) =	\$1,186.90
New Exempt Minimum Salary (less 10% credit) =	\$10,682.10

## 7. What must I do to comply with the new rules?

If your exempt employees' salaries fall below the new minimum, you will generally either have to take one of the following actions:

- Raise their salaries to the new minimum salary level (if you elect this option, review their job duties to ensure they continue to qualify for the applicable exemption); or
- Reclassify the affected employees as nonexempt and pay them overtime whenever they work more than 40 hours in a workweek.

Finally, in addition to the foregoing list, the US Department of Labor has published its own [Questions and Answers](#) relating to the new overtime rule, which is available [here](#).