

Overtime Law Changes

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OVERTIME!?

It's detention but with pay. Depending on your job.

Overtime updates will extend protections to 4.2 million workers.



dol.gov/overtime

The Overtime Rule

In 2014, President Obama directed the Secretary of Labor to update the overtime regulations to reflect the original intent of the Fair Labor Standards Act, and to simplify and modernize the rules so they're easier for workers and businesses to understand and apply. The department has issued a final rule that will put more money in the pockets of middle class workers – or give them more free time.

The final rule will:

- Raise the salary threshold indicating eligibility from \$455/week to \$913 (\$47,476 per year), ensuring protections to 4.2 million workers.
- Automatically update the salary threshold every three years, based on wage growth over time, increasing predictability.
- Strengthen overtime protections for salaried workers already entitled to overtime.
- Provide greater clarity for workers and employers.

The final rule will become effective on December 1, 2016, giving employers more than six months to prepare. The final rule does not make any changes to the duties test for executive, administrative and professional employees.

IN RESPONSE TO THE NEW OVERTIME RULE,
EMPLOYERS CAN:

- A) Pay time-and-a-half for overtime work.
- B) Raise workers' salaries above the new threshold.
- C) Limit workers' hours to 40 per week.
- D) Some combination of the above.

Strategic Responses

1. Close Monitoring of hours worked
2. Re-assignment of duties
3. Increasing employee wages
4. Increase in employee head count
5. Pay the overtime

Increase employee wages

For worker's with annual compensation near the new salary threshold for overtime, it might be beneficial to merely increase the salaries of employees to exceed the benchmark. Remember though that this could start other employee groups making demands as well.



Monitor Hours

Try and be vigilant in capping employee hours to no more than 40 per week – develop systems for warning when someone is getting close to 40.

Re-assign duties to others

Reassess who does what for the company. Juggle responsibilities. Assess productivity. Re-define company lines and be creative.

Hire new employees

Big picture view required. Hire more people might actually better allow the restriction of overtime and could come close to the same bottom line after including overtime.



**KEEP
CALM
AND
WORKING
OVERTIME**

Just pay the overtime

Here is a resource to help make these difficult decisions:

<https://www.adp.com/flsa-calculator/index.html>

Exemptions

CLAIMING A WHITE COLLAR EXEMPTION - THE THREE BASIC TESTS

For an employer to claim a white collar exemption for a particular employee, three tests generally need to be satisfied:

1. Payment on a salary basis: the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed;
2. Payment of a minimum salary level: the amount of salary paid must meet a specified minimum amount; and
3. Duties test: the employee's job duties must primarily involve those associated with exempt executive, administrative, professional, outside sales, or computer employees.

Executive Exemption

Executive exemption

To qualify for the executive employee exemption under the standard test, all of the following job duties requirements must be satisfied:

- The employee's primary duty must be managing the enterprise in which the employee is employed, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more 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
- The employee must 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.

Administrative Exemption

Administrative exemption

To qualify for the administrative employee exemption under the standard test, all of the following duties requirements must be satisfied:

- 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; and
- The employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

Outside Sales Exemption

Outside sales exemption

To qualify for the outside sales employee exemption, all of the following duties requirements must be satisfied:

- The employee's primary duty must be making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer. "Sales" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition. It includes the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

How about Bonuses?

Employers may use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level amount (up to \$91 of the \$913 per week threshold). Such payments must be paid on a quarterly or more frequent basis to count towards the salary level test. If an employee does not earn enough of a nondiscretionary bonus or incentive payment in a given quarter to meet the standard salary level, an employer may make a “catch-up” payment no later than the next pay period after the end of the quarter. Any such “catch-up” payment counts only toward the prior quarter’s salary. This is an exception to the salary basis test and appears in that regulatory provision.

Covered, nonexempt employees must be paid overtime pay at no less than one and one-half times the employee's regular rate of pay for hours worked in excess of 40 in a workweek.

The regular rate on which overtime pay is calculated includes remuneration (or pay) for employment, and certain payments made in the form of goods or facilities customarily furnished by the employer. For example, where the employee's wages include lodging customarily furnished by the employer, the reasonable cost or the fair value of the lodging furnished must be added to the employee's earnings before determining the regular rate. The regular rate does not include certain payments excluded by the FLSA.

In general, hours worked includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is suffered or permitted (i.e., allowed) to work. Review the definition of hours worked. To learn which work-related activities are considered hours worked, review the FLSA Hours Worked Advisor.

A workweek is a fixed and regularly recurring period of 168 hours, or seven consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day. An employee's frequency of pay (e.g., bi-weekly, semi-monthly, monthly) has no impact on this fixed workweek. Each workweek stands alone; averaging hours worked over two or more workweeks is not permitted by the FLSA



**WILL THE NEW
OVERTIME RULE
BE POSTPONED?**

"The Department of Labor's new overtime rule is the latest in a series of unlawful, overreaching and unilateral actions taken by President Obama's administration," Nevada AG Laxalt announced. "Longstanding federal law requires an overtime exemption for 'bona fide executive, administrative, or professional' employees."

Laxalt argues that the Department of Labor is ignoring this federal law and that it is – by executive fiat – forcing state, local and private employers to pay overtime to any employee who earns a certain amount ... regardless of whether that employee is actually performing "executive, administrative, or professional" duties.



In addition to Nevada, other states that joined this filing include: Alabama, Arizona, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, New Mexico, Ohio, Oklahoma, South Carolina, Texas, Utah and Wisconsin

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Questions?

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