

Q&A: Understanding the Big Changes to Overtime Law



Ending two years of speculation and hand-wringing by HR, the U.S. Department of Labor on May 18 announced its much-anticipated final changes to federal overtime rules. The big news: Starting Dec. 1, the salary threshold at which exempt employees will be automatically eligible for overtime pay will be doubled to \$47,476. The change is expected to bring 4.2 million additional white-collar workers into the ranks of overtime eligibility. Here is a compliance Q&A on those changes:

1. What is the purpose of the DOL's final overtime rule?

This [final rule](#) updates the regulations for determining whether white-collar salaried employees are exempt from the FLSA's minimum wage and overtime pay laws. Employees are exempt if they are employed in a bona fide executive, administrative or professional capacity.

2. Who qualifies for an exemption?

To qualify for exemption, a white-collar employee generally must be salaried and be paid more than a specified weekly salary level. Current law (expiring on Dec. 1, 2016) sets that salary threshold at \$455 per week (\$23,660 annually). Exempt employees also must primarily perform executive, administrative or professional duties, as defined in the duties test. ([Learn about the duties test here.](#))

Certain employees are not subject to either the salary basis or salary level tests (for example, doctors, teachers and lawyers). The DOL's regulations also provide an exemption for certain highly compensated employees (HCEs) who earn above a higher total annual compensation level (\$134,004 under this final rule) and satisfy a minimal duties test.

3. What are the significant changes to the overtime regulations?

The new rules increase the standard salary level from \$455 per week (\$23,660) to \$913 per week (\$47,476). Why that new number? The DOL set the new salary level equal to the 40th percentile of weekly earnings for full-time salaried workers in the lowest-wage Census region, currently the South. To prevent the salary limit from becoming outdated again, the new rules create mechanisms to automatically update the salary thresholds every three years. That means the salary threshold will next be changed on Jan. 1, 2020.

4. When will these changes take effect?



The effective date of the final rule is Dec. 1, 2016. On that day, the new standard salary level (\$47,476 per year) will take effect. Future automatic updates will occur every three years.

5. Did the DOL make any changes to the duties tests?

No, the DOL is not making any changes. The agency said it believes the increase to the salary level, coupled with automatic updating in the future, will address concerns that some workers who satisfy the duties test should be entitled to overtime pay because they are performing substantial amounts of overtime-eligible work (e.g., operating cash registers, stocking shelves, etc.). Plus, many employers argued during the rulemaking phase that changes to the duties test would be disruptive to their operations.

6. Can employers use bonuses to satisfy the new salary level test?

Yes. The DOL is changing the regulations to allow nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the standard salary test requirement. Such bonuses include, for example, nondiscretionary incentive bonuses tied to productivity or profitability. To credit bonuses toward the salary limit, they must be paid on a quarterly or more frequent basis.

7. How will employers implement the updated salary threshold?

Employers have a range of options. The DOL says that for each affected employee newly entitled to overtime pay, employers can:

- Increase the salary of an employee who meets the duties test to at least the new salary level (\$47,476) to retain his or her exempt status;
- Pay an overtime premium of one-and-a-half times the employee's regular rate for overtime hours worked;
- Reduce or cut overtime hours;
- Reduce the amount of pay allocated to base salary and add pay to account for overtime for hours worked over 40 in the workweek; or
- Use some combination of these responses.

	Current rules	New rules (take effect Dec. 1, 2016)
Salary level	\$455 weekly (\$23,660 per year)	\$913 weekly (\$47,476 per year) (Set at 40th percentile of full-time salaried workers in lowest-wage Census region, currently the South)
Highly compensated employees (HCE) limit	\$100,000 annually HCEs are considered exempt without regard to the duties test	\$134,004 annually (Set at 90th percentile of full-time salaried workers nationally)
Automatic adjusting of salary limits	None	Adjusted every three years, based on the salary levels listed above (40th and 90th percentile)
Bonuses	Nondiscretionary bonuses and commissions don't count toward the standard salary level	Up to 10% of standard salary level can come from non-discretionary bonuses, incentive payments and commissions (paid at least quarterly)
Duties test	See current duties test description at www.theHRSpecialist.com/OTlaw	No changes to the standard duties test

