



SCHELDROP BLADES

New Overtime Regulation Effects

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HOW WILL THE NEW OVERTIME REGULATION CHANGES AFFECT YOU & YOUR EMPLOYEES?

Effective December 1, 2016, the Department of Labor's new rule defining which "white collar" employees are exempt from overtime pay is scheduled to take effect.

Who does this affect?

The new rule raises the salary level from the current \$455 per week/\$23,660 per year up to \$913 per week/\$47,476 per year. Those employees who earn less than this new salary level will generally be considered nonexempt and thus be paid overtime whenever the employee works more than 40 hours per week, regardless of their job title or job duties.

For employees who make between the new threshold of \$47,476 and \$134,004, the standard duties tests determine whether they are exempt employees or not. To be considered exempt, this group of employees must fall into one of three categories: executive, administrative or professional, AND they must meet the following criteria: 1) the employee is paid a salary that is not subject to reduction based on quantity or quality of work; 2) the salary is at least \$47,476; and 3) the employee's primary job duties meet the duties test for the type of work performed. If they do not meet the duties tests or other exemption requirements (such as *job-specific exemptions* or as a highly compensated employee), regardless of salary, the employee is eligible for overtime wages.

EXECUTIVE: In order for an executive position paid at the new threshold to qualify as exempt, the employee's primary job duties must include managing a department or division, directing the work of at least two full-time equivalent employees, and having authority to hire and fire or provide significant input as to hiring and firing.

ADMINISTRATIVE: An administrative position remains exempt once the salary exceeds the new threshold where the primary duty is the performance of office or managerial non-manual work directly related to the management of the business and the employee exercises discretion and independent judgment on matters significantly related to the business.

PROFESSIONAL: The new threshold does not affect certain employees who are “learned” professionals. Teachers, lawyers, and doctors remain exempt regardless of their salary. For other “learned” or “creative” professionals to meet exempt status, their salary must meet the new threshold and the employee’s primary duty must involve work that requires either advanced knowledge in a field of science or learning that requires invention, imagination, or talent in a recognized field of artistic or creative endeavor.

HIGHLY COMPENSATED: Employees who now earn \$134,004 (up from the prior \$100,000) would be considered exempt as highly compensated employees if they perform at least one of the duties from the executive, administrative or professional exemptions.

In order to satisfy the salary threshold, employers can now include nondiscretionary bonuses and other incentive payments (including commissions) to satisfy up to 10% of the threshold salary for non-highly compensated employees. (Regardless though of the actual bonus or incentive payment, the amount is capped at 10% of the threshold salary amount.)

For employees who are considered nonexempt, whether they are salaried or paid hourly, the employer must also be sure to track and record their hours. The only requirement for the method used to do this is that it is complete and accurate.

Per the new rules, there will be automatic updates of the salary threshold every three years beginning January 1, 2020.

What options do you have?

Before choosing a course of action, employers should evaluate employees at risk of falling below the salary threshold for the number of hours worked per week, potential overtime wages earned, and any nondiscretionary bonuses and incentive payments the employee receives. This information will help the employer determine which option is right for each employee.

a. No wage change: A salaried employee who was formerly exempt under the duties test but makes less than the new threshold of \$47,476 is now classified as nonexempt and thus is overtime-protected. If, though, an employee does not work over 40 hours per week, they will not earn overtime pay so their overall wages will see no change. This employee can either be paid as salaried nonexempt or converted to an equivalent hourly rate, and their time must be tracked and recorded.

b. Raise the employee’s salary: When an employee meets the duties test for their position, is paid close to the new threshold amount and regularly works overtime, it may make economic sense to increase the employee’s salary to the new threshold amount.

c. Pay overtime above the salary: Pay overtime to the formerly-exempt salaried employee who is paid less than the threshold amount, meets the duties test, and does not frequently or consistently work overtime. This employee is now considered salaried nonexempt. Note that while they are now overtime-protected, there is no rule requiring they are paid on an hourly basis; there is only the requirement that they are compensated at an overtime rate for hours worked over 40 per week.

d. Reorganize workloads or adjust schedules: Adjust work assignments or schedules so that overtime is less likely needed, for example assign required work at the beginning of the week or adjust an employee's work schedule to arrive later if their job duties require them to work late, so as to maintain a 40 hour week.

e. Adjust employee's earnings so total wage paid remains the same: An employee's hourly base rate could be reduced so that with anticipated overtime, the overall weekly compensation remains largely the same. An employer may not continually adjust the wages and must comply with the minimum wage laws. As this would lead to a lower hourly wage and thus potentially lower wages, this could affect morale so using this option should be considered with caution.

Preparing for implementation of the new overtime rules

The new overtime rule will require tracking all time worked by nonexempt staff, even salaried nonexempt employees, so implement policies to comply with this.

Review payroll records to determine which employees automatically will be entitled to overtime pay due to wages under the new threshold amount. For those employees who are close to the threshold amount, review the amount of overtime worked to assess which of the above options may make economic sense to implement. However, when considering an option also assess whether the employee meets the duties test applicable for their position.

The Department of Labor's website (www.dol.gov) has resources available, including Fact Sheets, to assist in implementing the new overtime rule.

And of course, feel free to contact your employment attorney to assist you in ensuring your business is ready when the new overtime rule goes into effect on December 1, 2016.

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