

OVERTIME OVERHAUL

THE FINAL RULES ARE *FINALLY*
HERE

Dena H. Sokolow

dsokolow@bakerdonelson.com

Tallahassee, FL

850-425-7550

Twitter: FL_employ_law





OVERTIME – THE FUNDAMENTALS

FLSA – WAGE & HOUR LAW

The Fair Labor Standards Act (FLSA) requires that most employees be paid:

- at least the federal **minimum wage** for all hours worked and
- **overtime pay** (at time and one-half the *regular rate of pay*) for all hours worked over 40 hours in a workweek.

The FLSA is an employee protection act and employees are generally presumed entitled to overtime. Strict record-keeping requirements.

The FLSA, however, provides an exemption from both minimum wage and overtime pay for certain **“white collar”** workers.

“WHITE COLLAR” EXEMPTIONS

Categories of “white collar” employees that may be exempt from both minimum wage and overtime requirements of the FLSA:

- Executive
- Administrative
- Professional
- Outside Salespersons
- Highly Skilled Computer Employees
- Highly Compensated Employees



“WHITE COLLAR” EXEMPTIONS

Categories of “white collar” employees that may be exempt from both minimum wage and overtime requirements of the FLSA:

- **Executive**
- **Administrative – (EAP)**
- **Professional**
- **Outside Salespersons**
- **Highly Skilled Computer Employees**
- **Highly Compensated Employees – (HCE)**



FLSA - WAGE & HOUR LAW

Non-exempt employees = eligible for overtime

Exempt employees = ineligible for overtime

SO WHICH EMPLOYEES ARE “EXEMPT”?

- for EAP and HCE employees whether they are exempt or non-exempt depends on:
 - how they are paid
 - how much they are paid
 - what kind of work do they do

REQUIREMENTS FOR EXEMPTION

Remember, exemption depends on three things:

1. How employees are paid
2. How much they are paid
3. What kind of work do they do

REQUIREMENTS FOR EXEMPTION

Remember, exemption depends on three things:

1. *How* employees are paid  SALARY BASIS

- employee must be paid a pre-determined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed
- no partial day deductions

REQUIREMENTS FOR EXEMPTION

Remember, exemption depends on three things:

1. How employees are paid  **SALARY BASIS**
 - employee must be paid a pre-determined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed.
 - no partial day deductions
2. **How much** they are paid  **SALARY LEVEL**
 - currently this is \$455/week or \$23,660 per year

REQUIREMENTS FOR EXEMPTION

Remember, exemption depends on three things:

1. How employees are paid  **SALARY BASIS**
 - employee must be paid a pre-determined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed.
 - no partial day deductions
2. How much they are paid  **SALARY LEVEL**
 - currently this is \$455/week or \$23,660 per year
3. What *kind of work* do they do  **JOB DUTIES TEST**
 - each category of exemption – Executive, Administrative & Professional - has different required job duties as set forth in the regulations (ex. regularly supervises 2 or more full-time employees)

REQUIREMENTS FOR EXEMPTION

Remember, exemption depends on three tests:

1. How employees are paid

- employees must be paid on a salary basis

Must satisfy ALL THREE of these tests to be exempt from overtime.

-

2. How employees are paid

-

Paying salary alone is not enough!

3. What the employee does

- employees must have different required white collar job duties as set forth in the regulations (ex. regularly supervises 2 or more full-time employees)

Salaried employee is not the same as "exempt" employee.

EXECUTIVE, ADMINISTRATIVE & PROFESSIONAL DUTIES TEST

Executive, Administrative & Professional Duties Test – Executive, Administrative & Professional employees must have different required white collar job duties as set forth in the regulations (ex. regularly supervises 2 or more full-time employees)



THE NEW OT RULE

Announced May 18, 2016

Published in the Federal Register May 23,
2016 (TODAY) www.federalregister.gov

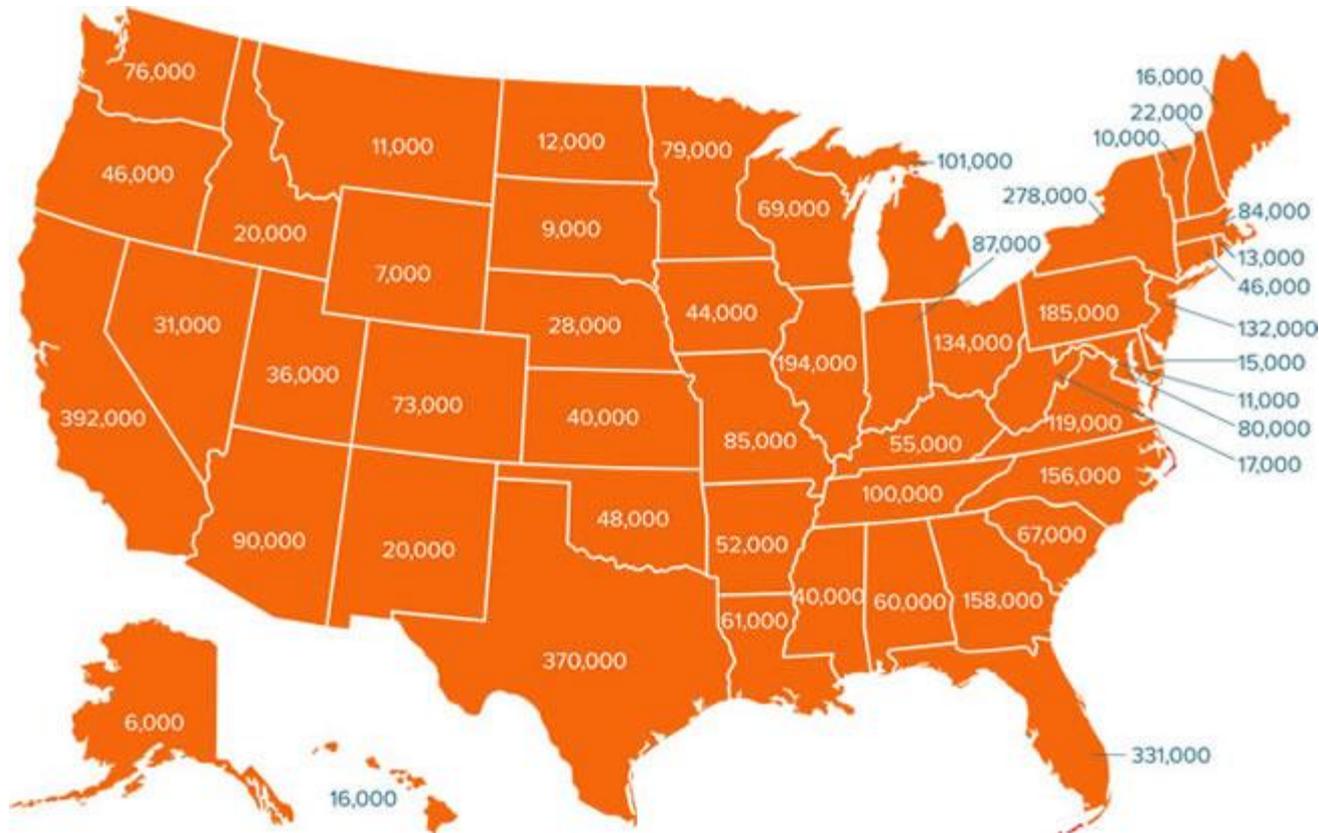
Effective December 1, 2016



THE NEW OT RULE

For EAP (Executive, Administrative and Professional) exemptions and HCE (Highly Compensated Employees)

ADDITIONAL 4.2 MILLION WORKERS ACROSS THE COUNTRY WILL BE NON-EXEMPT



Source: <https://www.dol.gov/featured/overtime>

THE FINAL RULE

Remember, exemption depends on three things:

1. How employees are paid  **SALARY BASIS**
 - employee must be paid a pre-determined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed.
 - no partial day deductions
2. **How much** they are paid  **SALARY LEVEL**
 - currently this is \$455/week or \$23,660 per year
3. What kind of work do they do  **JOB DUTIES TEST**
 - each category of exemption – Executive, Administrative & Professional have different required white collar job duties as set forth in the regulations (ex. regularly supervises 2 or more employees)

THE FINAL RULE – SALARY THRESHOLD

Currently:
\$455/wk
\$23,660

Proposed:
\$970/wk
\$50,440

FINAL RULE:
\$913/wk
\$47,476

THE FINAL RULE – SALARY THRESHOLD

- 40th percentile of weekly earnings of FT salaried workers in the lowest wage Census Region – the South

REGION	40 th Percentile (4 th Qtr 2015)
South	\$913
Midwest	\$994
Northeast	\$1,036
West	\$1,050

**FINAL RULE:
\$913/wk
\$47,476**

THE FINAL RULE – HIGHLY COMPENSATED EMPLOYEES

Currently:
\$100,000

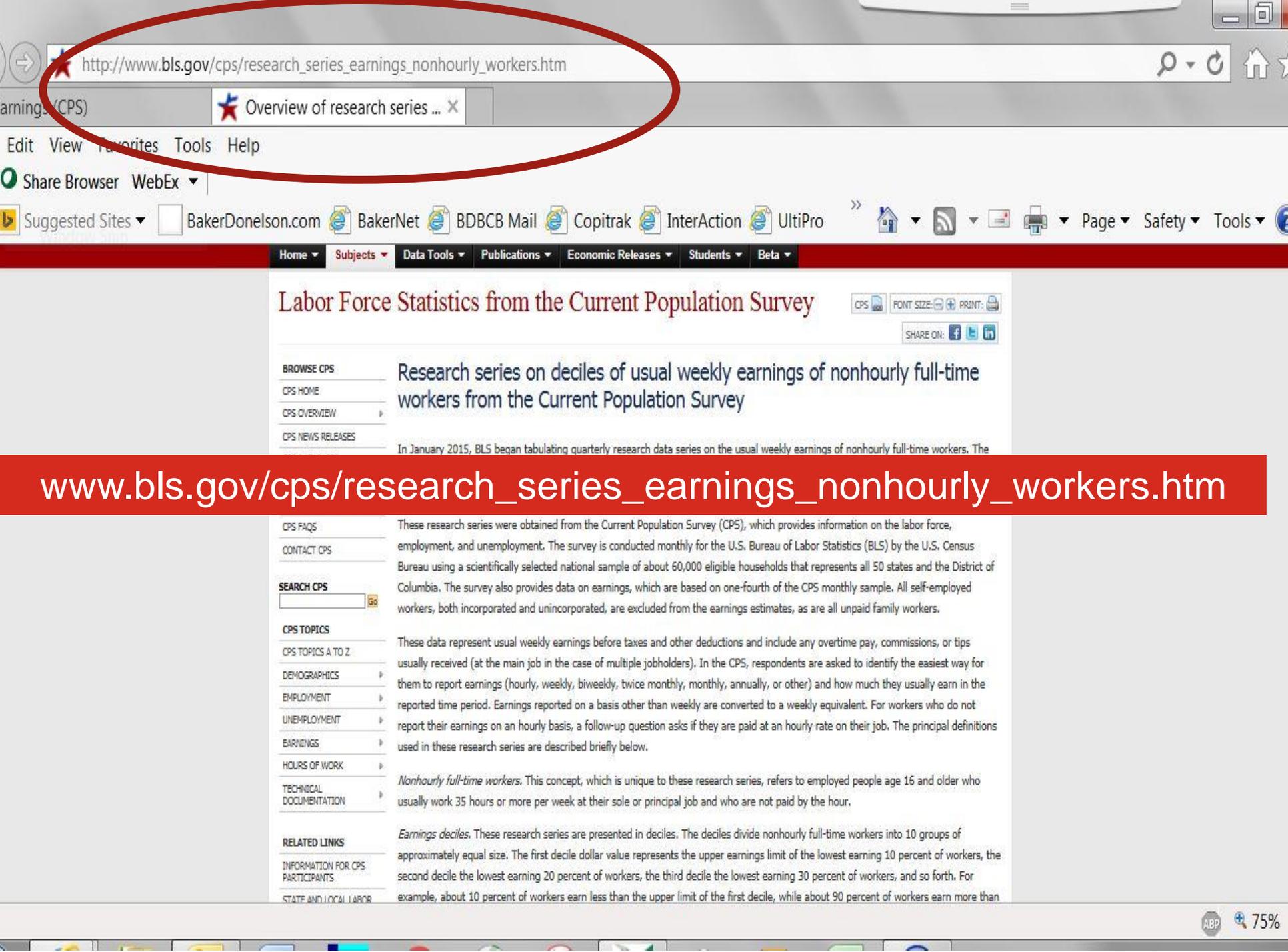
Proposed:
90th
percentile
of FT
workers
nationally

FINAL RULE:
\$134,004

AUTOMATIC UPDATE

The salary threshold will **automatically update every three years** beginning **January 1, 2020**

- will update to 40th percentile of weekly earnings for FT salaried workers in lowest wage region
 - will update HCE to maintain equivalent of 90th percentile of earnings of all FT salaried workers nationwide
 - based on Bureau of Labor Statistics
- estimates - \$51,168 and HCE \$147,524 in 2020



http://www.bls.gov/cps/research_series_earnings_nonhourly_workers.htm

Overview of research series ... X

Edit View Favorites Tools Help

Share Browser WebEx

Suggested Sites BakerDonelson.com BakerNet BDBC Mail Copittrak InterAction UltiPro

Home Subjects Data Tools Publications Economic Releases Students Beta

Labor Force Statistics from the Current Population Survey

CPS POINT SIZE: PRINT: SHARE ON: f t in

- BROWSE CPS
- CPS HOME
- CPS OVERVIEW
- CPS NEWS RELEASES

Research series on deciles of usual weekly earnings of nonhourly full-time workers from the Current Population Survey

In January 2015, BLS began tabulating quarterly research data series on the usual weekly earnings of nonhourly full-time workers. The

www.bls.gov/cps/research_series_earnings_nonhourly_workers.htm

- CPS FAQs
- CONTACT CPS
- SEARCH CPS
- CPS TOPICS
 - CPS TOPICS A TO Z
 - DEMOGRAPHICS
 - EMPLOYMENT
 - UNEMPLOYMENT
 - EARNINGS
 - HOURS OF WORK
 - TECHNICAL DOCUMENTATION
- RELATED LINKS
 - INFORMATION FOR CPS PARTICIPANTS
 - STATE AND LOCAL LABOR

These research series were obtained from the Current Population Survey (CPS), which provides information on the labor force, employment, and unemployment. The survey is conducted monthly for the U.S. Bureau of Labor Statistics (BLS) by the U.S. Census Bureau using a scientifically selected national sample of about 60,000 eligible households that represents all 50 states and the District of Columbia. The survey also provides data on earnings, which are based on one-fourth of the CPS monthly sample. All self-employed workers, both incorporated and unincorporated, are excluded from the earnings estimates, as are all unpaid family workers.

These data represent usual weekly earnings before taxes and other deductions and include any overtime pay, commissions, or tips usually received (at the main job in the case of multiple jobholders). In the CPS, respondents are asked to identify the easiest way for them to report earnings (hourly, weekly, biweekly, twice monthly, monthly, annually, or other) and how much they usually earn in the reported time period. Earnings reported on a basis other than weekly are converted to a weekly equivalent. For workers who do not report their earnings on an hourly basis, a follow-up question asks if they are paid at an hourly rate on their job. The principal definitions used in these research series are described briefly below.

Nonhourly full-time workers. This concept, which is unique to these research series, refers to employed people age 16 and older who usually work 35 hours or more per week at their sole or principal job and who are not paid by the hour.

Earnings deciles. These research series are presented in deciles. The deciles divide nonhourly full-time workers into 10 groups of approximately equal size. The first decile dollar value represents the upper earnings limit of the lowest earning 10 percent of workers, the second decile the lowest earning 20 percent of workers, the third decile the lowest earning 30 percent of workers, and so forth. For example, about 10 percent of workers earn less than the upper limit of the first decile, while about 90 percent of workers earn more than

BLS began tabulating these research series in response to a request by the Office of the Chief Economist of the Department of Labor.

Tables

- Quarterly
 - [First quarter 2016](#)
 - [Fourth quarter 2015](#)
 - [Third quarter 2015](#)
 - [Second quarter 2015](#)
 - [First quarter 2015](#)
 - [Fourth quarter 2014](#)
- Annual
 - [Annual average 2015](#)
 - [Annual average 2014](#)
 - [Annual average 2013](#)

Last Modified Date: April 19, 2016

RECOMMEND THIS PAGE USING: [Facebook](#) [Twitter](#) [LinkedIn](#)

TOOLS
Areas at a Glance

CALCULATORS
Inflation

HELP
Help & Tutorials

INFO
What's New

RESOURCES
Inspector General (OIG)

Deciles of usual weekly earnings of nonhourly full-time workers by selected characteristics, 4th quarter 2015 averages

Selected characteristics	Number of workers (in thousands)	Upper limit of:								
		First decile	Second decile	Third decile	Fourth decile	Fifth decile (median)	Sixth decile	Seventh decile	Eighth decile	Ninth decile
Total, both sexes	51,640	\$509	\$692	\$838	\$972	\$1,146	\$1,359	\$1,591	\$1,911	\$2,577
Men	29,218	563	746	907	1,082	1,272	1,508	1,823	2,124	2,905
Women	22,422	477	634	760	889	1,012	1,161	1,391	1,654	2,117
White, both sexes	41,336	518	710	847	985	1,154	1,376	1,630	1,923	2,623
Men	23,804	576	753	918	1,100	1,308	1,533	1,860	2,216	2,919
Women	17,532	485	644	768	892	1,021	1,166	1,402	1,665	2,175
Black or African American, both sexes	4,989	437	577	660	793	931	1,088	1,261	1,468	1,879
Men	2,369	486	597	699	824	959	1,161	1,343	1,534	1,902
Women	2,620	408	517	642	755	910	1,028	1,176	1,428	1,835
Asian, both sexes	4,103	596	804	970	1,142	1,356	1,568	1,868	2,248	2,885
Men	2,376	641	906	1,092	1,249	1,483	1,770	1,919	2,316	3,134
Women	1,727	513	711	888	1,000	1,156	1,420	1,615	1,900	2,417
Hispanic or Latino, both sexes	5,842	402	545	668	772	914	1,048	1,226	1,473	1,995
Men	3,598	399	555	678	781	942	1,084	1,303	1,608	2,100
Women	2,245	404	527	648	762	873	1,005	1,147	1,356	1,749
Region										
Northeast (1)	10,436	524	725	880	1,036	1,207	1,445	1,673	1,976	2,879
Midwest (2)	10,406	572	734	867	994	1,154	1,360	1,564	1,902	2,469
South (3)	19,716	479	633	768	913	1,054	1,242	1,508	1,866	2,418
West (4)	11,082	560	731	887	1,050	1,229	1,453	1,752	2,062	2,807

Footnotes:

- (1) The Northeast region includes Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.
- (2) The Midwest region includes Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.
- (3) The South region includes Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.
- (4) The West region includes Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington,

BONUSES AND INCENTIVE PAY

- up to **10%** of the salary threshold can be met by non-discretionary bonuses, incentives and commission
- must be **paid at least quarterly**
- non-discretionary – “forms of compensation promised to employees to induce them to work more efficiently or stay with the company”
- tied to productivity, profitability and/or specified performance metrics



BONUSES AND INCENTIVE PAY – CATCH UP

- Employers can make a catch up payment at the end of the quarter
 - one pay period to make up for the shortfall



BONUSES AND INCENTIVE PAY – CATCH UP

What Does this Mean?

- Employers must pay employee at least 90% of the salary threshold (\$821.70/week which is 90% of \$913)
- The remaining \$91.30/week can be paid in commissions, non-discretionary bonuses or incentives
- If at the end of the quarter, employee didn't earn \$91.30/week in bonus/commission . . . one additional pay period to pay a lump sum to raise the employees earnings for the quarter to the salary threshold



HIGHLY COMPENSATED EMPLOYEES

- Under new regulation must earn \$134,004 in total annual compensation
- *and* customarily and regularly perform any one or more of the exempt duties or responsibilities of an EAP employee.
 - DOL declined to eliminate job duties test for HCE

HIGHLY COMPENSATED EMPLOYEES

HCE must receive at least \$913 per week on a salary or fee basis, while the remainder of the total \$134,004 of annual compensation may include:

- commissions, nondiscretionary bonuses, and other nondiscretionary compensation
- does not include board, lodging, payments for medical insurance, life insurance, retirement plans, or other fringe benefits
- a final “catch-up” payment

“WHITE COLLAR” EXEMPTIONS

Categories of “white collar” employees that may be exempt from both minimum wage and overtime requirements of the FLSA:

- Executive
- Administrative
- Professional
- **Outside Salespersons**
- **Highly Skilled Computer Employees**
- Highly Compensated Employees



OUTSIDE SALES

- The employee must be customarily and regularly engaged in sales away from the employer's place or places of business.
- **The salary threshold requirements do not apply to the outside sales exemption.**

HIGHLY SKILLED COMPUTER

- The employee must be compensated either on a salary or fee basis at a rate not less than \$913 per week OR, if compensated on an hourly basis, at a rate not less than \$27.63 an hour
 - special hourly rate did not change
- and meet the job duties for highly skilled computer employee exemption



IMPACT AND TIPS FOR RECLASSIFICATION

COMPLIANCE PERIOD

**Compliance period is from now until
December 1, 2016**

**DON'T WAIT
UNTIL
IT'S TOO
LATE!**



FIRST STEPS

1. Identify employees who will need to be reclassified – i.e. currently exempt but paid less than \$47,476.00 annually
2. Determine hours the employee works
 - Suffered or Permitted (even if not requested)
 - Waiting Time
 - On-Call Time
 - Meal and Rest Periods
 - Training Time
 - Travel Time
 - “Hidden” OT



FIRST STEPS

3. Model potential costs based on possible response
 - e.g. raise pay to new threshold level, reclassify as nonexempt and pay overtime, or lower pay to offset overtime requirement)
4. Review job descriptions and tasks of impacted positions
 - determine if certain exempt tasks may be reassigned or maintained with the current position
5. Consider how pay changes or other changes in job assignments may impact your organization
6. Develop administrative implementation plans including payroll and HRIS systems, in order to ensure compliance when the regulations become official

KEY ISSUE: MIXED CLASSIFICATION POSITIONS

- There may be a positions that contains both exempt and non-exempt employees based solely on their salary
 - same duties and responsibilities but salaries create different classifications
 - requirements of timekeeping and possible resistance
 - monitoring “off the clock” work – including remote work
 - if employee is manager, who will do the monitoring?
 - partial-day deductions
 - benefit differentiation (exempt v. non-exempt)
 - morale issues

KEY ISSUE: TIMEKEEPING

- It is the **employer's obligation** that non-exempt employees record their time accurately
 - “as long as they are complete and accurate, employers may use any method they chose for tracking and recording hours”
 - if time records are inaccurate (e.g. repeating 8s), the DOL will ask the employee how many hours they worked and presume that is correct even if the employee exaggerates their hours
- what is going to be your time keeping mechanism for newly classified employees?
- who is going to monitor those time records?
 - recommend monitoring newly classified employees' records regularly at first
 - require verification

CALCULATING OT: REGULAR RATE

- Overtime is calculated at one and a half times **regular rate** - “all remuneration for employment paid to, or on behalf of the employee”
- Regular rate is determined by **dividing total earnings in the workweek by the total number of hours worked in the workweek**
- May not be less than the applicable minimum wage

CALCULATING OT: REGULAR RATE

- Included in regular rate:
 - wages or salary
 - non-cash wages in form of goods, boarding & lodging
 - pay differentials and premium pay for hazardous work
 - non-discretionary bonuses
 - commissions
 - other incentive payments based on hours worked, production or efficiency

CALCULATING OT: REGULAR RATE

- NOT Included in regular rate:
 - Sums paid as gifts
 - Payments for time not worked (paid leave)
 - Reimbursement for expenses
 - Discretionary bonuses
 - Profit sharing plans
 - Retirement and insurance plans
 - Overtime premium payments
 - Stock options

CALCULATING OT: REGULAR RATE

- Step 1: Total Straight Time Earnings (Minus Statutory Exclusions) Divided By Total Hours Worked = Regular Rate
- Step 2: Regular Rate x .5 = Half Time Premium
- Step 3: Half Time Premium x Overtime Hours = Total Overtime Premium Due

EXAMPLE: HOURLY RATE + PRODUCTION BONUS

Total Hours = 48

Hourly Rate = \$9.00

Bonus = \$10

48 hours x \$9.00 = \$432.00

Bonus + \$10.00

Total = \$442.00

\$442.00/48 hrs = \$9.21 (Regular Rate)

\$9.21 x 0.5 = \$4.61

\$4.61 x 8 hrs = \$36.88 (Overtime Due)

TOTAL COMP FOR WEEK: \$422.00 + \$36.88 = \$458.88

EXAMPLE: DIFFERENT HOURLY RATES

Total Hours = 47

Janitor Rate = \$8.50, Janitor Hours 21 hours

Cook Rate = \$9.00, Cook Hours 26 hours

$$21 \text{ hours} \times \$8.50 = \$178.50$$

$$26 \text{ hours} \times \$9.00 = \underline{\$234.00}$$

$$\text{Total} = \$412.50$$

$$\$412.50 / 47 \text{ hours} = \$8.78 \text{ (Regular Rate)}$$

$$\$8.78 \times 0.5 = \$4.39$$

$$\$4.39 \times 7 \text{ hours} = \$30.73 \text{ (Overtime Due)}$$

$$\text{TOTAL COMP FOR WEEK: } \$412.50 + \$30.73 = \$443.23$$

EXAMPLE: PIECE RATES

Piece Rate Earnings = \$391.00 46 hours

Waiting Time Rate = \$7.25 4 hours

Production Bonus = \$12.50

46 hours = \$391.00

4 hours x \$7.25 = \$29.00

Production Bonus = \$12.50

Total = \$432.50

\$432.50 / 50 hours = \$8.65 (Regular Rate)

\$8.65 x 0.5 = \$4.33

\$4.33 x 10 hours = \$43.30 (Overtime Due)

TOTAL COMP FOR WEEK: \$432.50 + \$43.30 = \$475.80

EXAMPLE: WEEKLY COMMISSION

Hourly rate = \$10

Hours worked - 50

Weekly Commission = \$100

50 hours x \$10 = \$500.00

Commission = \$100.00

Total = \$600.00

\$600.00 / 50 hours = \$12.00 (Regular Rate)

\$12.00 x 0.5 = \$6.00

\$6.00 x 10 hours = \$60.00 (Overtime Due)

TOTAL COMP FOR WEEK: \$600.00 + \$60.00 = \$660.00

RECLASSIFICATION OPTIONS

- **Raise salary to \$47,476**
 - evaluate which employees are close to the new threshold
 - if the employee works enough overtime, may be more cost efficient to raise their salary
- **Convert to hourly and pay or limit OT**
- **Adjust schedules, spread work hours, or reorganize workloads**

RECLASSIFICATION OPTIONS

- **Pay current salary**
 - If employee earns under \$47,476 but does not work overtime, no impact on pay
 - e.g. employee earns \$42,000 but works a strict 9-5 schedule, can continue to pay the fixed salary (just have to document hours worked)
- **Pay overtime above a salary**
 - can continue to pay a salary for fixed hours, which can be more than 40 hours per week
 - only required to pay half time for hours already included in salary

EXAMPLE: SALARY FOR MORE THAN 40 HOURS (SALARY DOES NOT COVER OT)

Employee earns \$44,220/yr (\$850/week)
for a 50 hour work week

Regular Rate is \$17 (\$850/50)

OT Premium is \$8.50/hour

Salary for 50 hours: \$850.00

10 hours x 8.50: \$85.00

TOTAL COMPENSATION FOR WEEK \$935.00

EXAMPLE: SALARY FOR MORE THAN 40 HOURS (SALARY DOES NOT COVER OT)

Employee earns \$44,220/yr (\$850/week)
for a 50 hour work week

Employee only works 46 hours

Regular Rate is \$18.48 ($\$850/46$)

OT Premium is \$9.24/hour

Salary for 50 hours: \$850.00

6 hours x 9.24: \$55.44

TOTAL COMPENSATION FOR WEEK \$905.44

EXAMPLE: SALARY FOR MORE THAN 40 HOURS (SALARY DOES NOT COVER OT)

Employee earns \$44,220/yr (\$850/week)
for a 50 hour work week

Employee works 55 hours

Regular Rate is \$15.45 (\$850/55)

OT Premium is \$7.73/hour

Salary for 50 hours: \$850.00

10 hours x \$7.73: \$77.30

5 hours x \$23.18 (time and a half regular rate): \$115.90

TOTAL COMPENSATION FOR WEEK \$1,043.20

EXAMPLE: SALARY FOR MORE THAN 40 HOURS (COVERS OT)

Employee earns \$39,520/yr (\$760/week)
for a 45 hour work week – includes straight and OT

Straight time \$16 regular rate x 40 hours: \$640

OT for hours 41-45 \$24 x 5 hours: \$120

Total \$760

BUT if employee's schedules changes in any way for any week, salary needs to be adjusted to reflect hours actually work for the week

EXAMPLE: FIXED SALARY FOR FLUCTUATING HOURS

Fixed Salary \$420.00 (for all hours worked)

Week 1 Hours Worked 49

Regular Rate \$8.57 ($\$420 / 49$ hours)

Additional Half-Time Rate \$4.29

Salary Equals = \$420.00

9 hours x \$4.29 = \$38.61 (Overtime Due)

Total Due = \$458.61

EXAMPLE: FIXED SALARY FOR FLUCTUATING HOURS

Fixed Salary \$420.00 (for all hours worked)

Week 2 Hours Worked 41

Regular Rate \$10.24 ($\$420 / 41$ hours)

Additional Half-Time Rate \$5.12

Salary Equals = \$420.00

1 hour x \$5.12 = \$5.12 (Overtime Due)

Total Due = \$425.12

NOW IS THE TIME TO CLEAN HOUSE!

Audit all of your exemptions and make any necessary changes.

- especially where you have a mixed classification position
- also take a look at independent contractor relationships, time-keeping methods, off-the-clock work



IMPORTANT CONSIDERATIONS

- Issues with morale and perception:
 - Employees will often see reclassification as a “demotion”
 - many employees prefer being overtime-exempt. It means they don’t have to track their hours—and have more flexibility over when and where they work.
 - may resist keeping time records or accumulate “hidden” overtime.
 - Plan for how this re-classification will be communicated to affected employees.

IMPORTANT CONSIDERATIONS

- Training newly classified non-exempt employees (and their supervisors) on:
 - Timekeeping records and procedures
 - Complying with meal/rest break requirements
 - Restrictions on working outside normal work hours, travel time, and other compensable time issues
 - Deductions for partial-day absences
- Do policies need to be updated or re-written?
 - are you going to limit the non-exempt duties “off-duty” work? do you need policy changes? (e.g. email curfew)

DOL WILL BE KNOCKING!

- DOL's FY2017 budget proposes spending **\$277 million on Wage and Hour Division enforcement**
 - \$50 million more than 2016
 - DOL recovered more than \$246 million in back wages in 2015 alone for more than 240,000 workers.
 - In 2015, the Division found violations in 79% of its investigations.



CONGRESSIONAL REVIEW ACT

- During the 60-day period, any member of Congress can introduce a “resolution of disapproval” which has the effect of nullifying the rule
 - It must be offered as a joint resolution, subject to a potential presidential veto, passed by a simple majority in both houses
 - If vetoed, a two-thirds vote in both houses is needed to override the veto . . . **NOT LIKELY**

CHALLENGES TO THE REGULATION

Protecting Workplace Advancement and Opportunity Act (S. 2707 and H.R. 4773) would:

- Nullify the proposed rule.
- Require the DOL to first conduct a comprehensive economic analysis on the impact .
- Prohibit automatic increases
 - Introduced 3 days after rule went to OMB (March 17)
 - www.govtrack.us predicts there is a 7% chance of the bill passing

STAY TUNED

BAKER DONELSON will keep you updated with alerts and follow-up webinars. Make sure you are on our mailing list!

Dena H. Sokolow

850-425-7550

dsokolow@bakerdonelson.com

