

Department of Labor Issues Final Regulations Trimming FLSA Overtime Exemption for White Collar Employees

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Authors: [Tal Marnin](#), [Robin Heszkel](#), [Patricia Alejandro](#)

[New Rule Raises Salary Threshold to Qualify for Certain “White Collar” Exemptions.](#)

Overview

On May 18, 2016, the U.S. Department of Labor (the “DOL”) published its *final rule* (the “Final Rule”)¹ updating overtime regulations and more than doubling the salary threshold necessary to meet the requirements of the white collar overtime exemption under the Fair Labor Standards Act (the “FLSA”). That threshold now will be \$47,476 per year. As a general matter, the FLSA requires that covered employees receive a minimum wage and also overtime pay for hours worked over 40 hours in a work week. However, the FLSA provides a number of exemptions from these requirements, including exemptions for certain executive, administrative, professional, computer, and highly-compensated employees (the so-called “White Collar Exemptions”).² The Final Rule substantially raises the salary level necessary to qualify for the White Collar Exemptions. However, it does not make any changes to the “duties” tests that also must be satisfied in order to qualify for the White Collar Exemptions: an employee’s “primary duties” will continue to be evaluated on a qualitative rather than a quantitative basis. The Final Rule takes effect on December 1, 2016.

What are the key features of the Final Rule?

- *The Final Rule increases the minimum salary level to \$913/week (or \$47,476 per year).*

The Final Rule doubles the minimum salary level needed for employees to qualify for the executive, administrative, professional, computer and highly-compensated employees exemptions, from \$455 per week (or \$23,660 per year) to \$913 per week (or \$47,476 per year). This amount equals the 40th percentile of earnings of full-time salaried workers in the lowest wage Census Region. The Final Rule also increases the compensation level needed to satisfy the “highly-compensated employee” exemption—an exemption available for employees who meet some but not all of the requirements of the executive, administrative, or professional exemptions—from \$100,000 to \$134,004 per year. This amount equals the annual equivalent of the 90th percentile of full-time salaried workers nationally.

¹ [29 C.F.R. 541 \(2016\)](#)

² The “outside salesperson” exemption is also considered to be one of the so-called White Collar Exemptions, but the outside salesperson exemption does not require a minimum salary in order to qualify for the exemption and therefore is not affected by the Final Rule.

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- *Employers are permitted to use bonuses to satisfy 10% of the minimum salary level.*

The Final Rule allows employers to satisfy up to 10% of the standard salary requirement for executive, administrative, professional and computer employees with nondiscretionary bonuses and incentive payments (including commissions). In order for nondiscretionary bonuses and incentive payments to be credited toward a portion of the minimum required salary level, the payments must be made on a quarterly or more frequent basis.

- *The minimum salary level will update automatically every three years.*

The Final Rule establishes a mechanism for automatically updating the salary and compensation levels every three years. The minimum salary threshold will be set at the 40th percentile of full-time salaried workers in the lowest income Census region. The first update will take place on January 1, 2020.

What is the expected impact of the Final Rule?

The new salary threshold requirement significantly expands the number of “white collar” employees who will be eligible to receive overtime pay under the FLSA—primarily, employees whose salaries fall between \$23,660 and \$47,476 per year. As of December 1, unless employers increase salaries of these employees to meet the new minimum salary level, employers will need to start paying these employees at the overtime rate for any hours worked in excess of 40 in a single workweek (either with the same base salary or a reduced base salary to account for the additional overtime to be paid). To avoid the obligation to pay overtime, employers may instead choose to adjust work schedules to reduce or eliminate overtime hours for affected “white collar” employees. Note also that the FLSA does not preempt states from establishing more protective standards, which may be particularly relevant in states such as New York and California that have initiated substantial increases in the minimum wage to phase in over the next few years.

White & Case LLP
1155 Avenue of Americas
New York, New York 10036-2787
United States

T +1 212 819 8200

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