



The New Overtime Rule

The U.S. Department of Labor (DOL) has issued a final rule regarding overtime eligibility and specifically, the exemption for employees serving in executive, administrative and professional capacities, also known as the “white collar” exemption. Employers must comply with the new rule by Dec. 1, 2016.

The rule will have significant ramifications for many employers, including home building firms and not-for-profits, such as HBAs. According to NAHB analysis, nearly 100,000 construction supervisors will now be eligible for overtime under the new rules.

Background

The Fair Labor Standards Act (FLSA) requires overtime to be paid to employees when time worked exceeds 40 hours per week. There are some exceptions: Executive, administrative and professional employees can be exempt from overtime as long as they meet certain criteria including salary basis, salary level and standard duties. The new rules did not change the salary basis or standard duties provisions, but did increase the salary level criteria.

Under the new rules, the Administration doubled the annual salary level used in determining whether an employee qualifies for the exemption from \$23,660 to \$47,476. If an employee previously met the exemption, their salary must be at least \$47,476 to continue to meet it. The salary threshold will be adjusted every three years under the new rules.

Some [states](#) have also enacted overtime laws. Where an employee is subject to both the state and federal overtime laws, the employee is entitled to overtime according to the higher standard (that which will provide the higher rate of pay).



Frequently Asked Questions

1. *Which type of employees are eligible for the executive, administrative and professional exemption?*

- CEOs or executive officers are examples of employees who would qualify as “**executives**” under the exemption. To be exempt from overtime, an executive employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise. They must also regularly direct the work of at least two or more other full-time employees and have the authority to hire or fire staff to qualify for the exemption.
- **Administrative employees**, such as receptionists or office managers, may also be exempt from overtime. Administrative employees’ primary duties must be the performance of office or non-manual work directly related to the management or general business operations of the employer. They must also have the ability to exercise discretion and independent judgment with respect to matters of significance to qualify for the exemption.
- **Professional employees**, such as lawyers, are exempt from overtime if their primary duties include the performance of work requiring advanced knowledge that is customarily acquired by a prolonged course of specialized intellectual instruction.

2. *Do my employees meet the necessary criteria to be exempt from overtime?*

Yes, if your employees meet the criteria listed above and also have a salary level above \$47,476, they will be exempt from overtime. Employees will only be due time and a half if they make less than \$47,476 and work more than 40 hours per week.

3. *Are my outside sales staff due overtime?*

No, provided outside sales employee meets both these requirements:

- (a) The employee’s primary duty must be making sales (as defined in the FLSA).
- (b) The employee must be customarily and regularly engaged away from the employer’s place of business.

Notably, there is no salary requirement under this separate Outside Sales exemption. More information is available in DOL’s [Fact Sheet #17G](#).



4. *Do bonuses count towards the salary threshold determination?*

Yes, up to 10% of standard salary level can come from non-discretionary bonuses, incentive payments and commissions, paid at least quarterly.

5. *Are officers of a partnership or limited liability company due overtime under the new rules?*

No. Under a special rule for business owners, an employee who owns at least a bona fide 20% equity interest in the enterprise in which employed, regardless of the type of business organization (i.e., corporation, partnership or other), and who is actively engaged in its management, is considered a bona fide exempt executive.

6. *What options do I have under the new rule?*

First, identify exempt positions where employees earn less than \$47,476. For these employees, determine whether you will increase their salary above the new salary threshold to qualify for the exemption or reclassify certain salaried workers into hourly workers to limit the employee's hours to 40 per week. Another consideration is whether benefits will change for workers moving from exempt to non-exempt.

7. *I am very concerned about the new overtime requirements. Is Congress doing anything?*

Yes. Lawmakers have introduced the *Protecting Workplace Advancement and Opportunity Act* ([S. 2707](#) and [H.R. 4773](#)), which would nullify this rule and require DOL to perform an economic analysis of how changes to overtime regulations will impact nonprofits, small businesses and employers in other vulnerable industry sectors before issuing a new rule.

Members are urged to [contact their Members of Congress](#) and ask for their support for both bills.

