

PRESENTED AT
ESSENTIAL EMPLOYMENT LAW

August 20, 2021
Austin, Texas

**THE FAIR LABOR STANDARDS ACT:
WAGE & HOUR BASICS**

Katrina Grider

U.S. Equal Employment
Opportunity Commission (EEOC)
131 M. Street, N.E.
Washington, D.C. 20507
katrina.grider@eoc.gov

THE FAIR LABOR STANDARDS ACT: Wage and Hour Basics

I. IMPORTANT UPDATE EFFECTIVE JANUARY 1, 2020

On Sept. 24, 2019, the U.S. Department of Labor (DOL) issued the final rule on the new salary threshold for white-collar exempt status employees under the Fair Labor Standard Act. The new rule changes the current salary level for exempt employees from \$23,660 per year to \$35,568 annually. The rule became effective January 1, 2020.

A. Components of the New FLSA Salary Threshold Rule

The DOL noted the following key components:

- The standard weekly salary level changes from \$455 to \$684 per week (equivalent to \$35,568 per year for a full-year worker).
- The total annual compensation level for "highly compensated employees (HCE)" changes from the current level of \$100,000 to \$107,432 per year.
- Employers are permitted to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10 percent of the standard salary level.

Significantly, the new rule does not change the job duties test related to exempt status and does not require annual automatic adjustments to the salary threshold.

The final rule updates the salary level threshold for exempt executive, administrative, and professional employees for the first time since 2004. With a salary level increase that most employers consider reasonable, this rule will likely go into effect with minimal fanfare, unlike the unsuccessful effort in 2016 to raise the salary level to \$47,476 annually. The DOL has estimated that the new rule will result in an additional 1.2 million workers that will be entitled to minimum wage and overtime pay as the likely result of change in status from exempt to non-exempt.

B. Steps for Employers

Review positions currently classified as exempt from overtime pay. There are two aspects to this review – determine whether employees currently in exempt positions meet both the new minimum salary requirement and the duties test for an overtime exemption.

1. The Salary Test

The new regulations require that an employee in a white collar exempt position must be paid at least \$684 per week. If the weekly salary is below that level, an employer must take some action. An employer has two options:

- Raise employees' pay to meet the new salary level requirement to maintain exempt status.

- Convert the employees to non-exempt status and pay the employees for overtime worked over 40 hours in a week.

In making this decision, employers should consider a number of factors that include the employee's current pay, the hours continually worked by the employee, and the employer's ability to control or manage the hours worked.

2. *The Duties Test*

Remember, a position classified as exempt must meet the salary and the duties test. Employers should use this regulatory change as an opportunity to review the classification of all exempt positions, regardless of salary level. Positions that meet the exempt status duties test are not always clear cut and changes in responsibilities and technology can muddy the waters even further. This is an opportunity to review and fix misclassification errors.

3. *Ensure that timekeeping procedures are in place.*

Once it is determined that some employees will be reclassified as non-exempt, ensure that procedures are in place to properly track hours worked for these employees. For many newly non-exempt employees who have not tracked time worked, this will be a significant – and unpopular – change. Employers must also address such timekeeping items as travel time, lunch and break time, after-hours emailing and texting, and other compensable time issues.

4. *Review policies and procedure*

The reclassification of employees may also impact other employment policies such as time off benefits, telecommuting, flextime, and incentive pay policies.

5. *Prepare employee communications.*

It is critical to communicate these changes to employees in a clear and direct manner so that employees understand how their pay and hours will be affected. The communication should address timekeeping procedures and other policy issues. Many newly non-exempt employees who are used to having workplace flexibility as exempt employees will need to understand requirements for timekeeping and getting approval for overtime work.

The DOL has published the following fact sheets regarding the salary basis and the exemption classifications:

[Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act \(FLSA\)](#)

[Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act \(FLSA\)](#)

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: The Fair Labor Standards Act: Wage & Hour Basics

Also available as part of the eCourse

[2021 Essential Employment Law eConference](#)

First appeared as part of the conference materials for the
2021 Essential Employment Law: A Practical Course in the Basics session
"Wage and Hour: An Old Law in a Modern World"