

# INFOBRIEF



## TOPIC: DEPARTMENT OF LABOR (DOL) ISSUES FINAL OVERTIME RULE

ISSUED 01/22/20

The Fair Labor Standards Act (FLSA) mandates virtually all employers to pay employees time-and-a-half if their workweek exceeds 40 hours but provides an exemption for bona fide executive, administrative, and professional workers who meet the duties and salary test. Thresholds for these rules were established in 2004, later increased in 2016, and then halted with the DOL's March 2019 announcement indicating its intent to issue a [new rule](#). After receiving more than 116,000 comments, the DOL issues its final rule.

### The New Rule

Affecting approximately 1.3 million salaried workers, the new rule guarantees the nonexempt status of these individuals allowing them to earn overtime wages. To qualify for an exemption an employee must be salaried, paid at least the standard specified weekly/annual salary level, and primarily performs executive, administrative, or professional duties defined under the [DOL's duties test](#).

The final rule reflects increases to the standard salary level to reflect current earnings. The chart below reflects a comparison of the new federal rule to prior versions. If a State has a more protective standard than this provision, the state's law will govern in that State.

Category	Current	May 2016 Rule	March 2019 Notice of Proposed Rule	September 2019 Final Rule
Standard Salary Level*	<ul style="list-style-type: none"><li>• \$455 weekly</li><li>• \$23,660 annually</li></ul>	<ul style="list-style-type: none"><li>• \$913 weekly</li><li>• 40th percentile of full-time salaried workers in the lowest-wage Census region (currently the South)</li></ul>	<ul style="list-style-type: none"><li>• \$679 weekly</li><li>• \$35,308 annually</li></ul>	<ul style="list-style-type: none"><li>• \$684 weekly</li><li>• \$35,568 annually</li></ul>
HCE Total Annual Compensation Requirement	\$100,000 annually	<ul style="list-style-type: none"><li>• \$134,004 annually</li><li>• 90th percentile of full-time salaried workers nationally</li></ul>	<ul style="list-style-type: none"><li>• \$147,414 annually</li><li>• 90th percentile of full-time salaried workers nationally</li></ul>	<ul style="list-style-type: none"><li>• \$107,432 annually</li><li>• 80th percentile of full-time salaried workers nationally</li></ul>
Automatic Adjusting	None	Every 3 years, maintaining the standard salary level at the 40th percentile of full-time salaried workers in the lowest-wage Census region, and the HCE total annual compensation level at the 90th percentile of full-time salaried workers nationally.	Commitment to periodic review with notice and comments periods	Commitment to more regular updates through notice-and-comment rulemaking

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ISSUED 01/12/20

Category	Current	May 2016 Rule	March 2019 Notice of Proposed Rule	September 2019 Final Rule
Bonuses**	No provision to count nondiscretionary bonuses and commissions toward the standard salary level	Up to 10% of standard salary level can come from non-discretionary bonuses, incentive payments, and commissions, paid at least quarterly.	Up to 10% of standard salary level can come from non-discretionary bonuses, incentive payments, and commissions, paid at least quarterly.	Up to 10% of standard salary level can come from non-discretionary bonuses, incentive payments, and commissions, paid on an annual or more frequent basis.

### \*Special Salary and Base Rate Levels

Due to minimum wage rates that are lower than the federal minimum wage rates, these U.S. territories will apply to employees in these areas:

- America Samoa = \$380 per week
- Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands = \$455 per week

The unique base rate threshold will increase for employees in the motion picture industry. The new base rate is \$1,043 per week (prorated on the number of days worked).

### \*\*Catch-Up Payments

The DOL clarifies that if an employee doesn't earn enough to retain an exempt status in a given year, i.e. 52-week period, employers may make a "catch-up" payment if done in the one pay period following the 52-week period. The amount can be no more than 10% of the total standard salary level for the preceding 52-week period and can be counted solely toward the salary amount for the prior year.

### Employer Actions

Employers should:

- Review "executive, administrative, and professional" duties criteria to determine the individuals that the rule will affect
- Begin reviewing the salaries of those employees and determine which workers will be exempt and non-exempt
- Notify affected employees
- Understand the impact of discretionary income and how that affects the employee exemption
- Review the "catch-up" payment provisions and identify possible employees for which this payment may need to be made and set a reminder to review for the payroll period subsequent to the end of the year