

# Urgent Alert: U.S. DOL Publishes Final Overtime Rule

*SmithAmundsen Labor & Employment Alert*  
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Today the US Department of Labor (DOL) issued its long awaited final rule increasing the minimum salary requirements under the Fair Labor Standards Act (FLSA).

## **Key Provisions of the Final Rule**

The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt.

Of particular significance, the Final Rule:

1. Sets the standard salary level at \$913 per week – \$47,476 annually;
2. Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to \$134,000; and
3. Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels using the above percentiles.

Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.

The effective date of the final rule is December 1, 2016. The initial increases to the standard salary level (from \$455 to \$913 per week) and HCE total annual compensation requirement (from \$100,000 to \$134,004 per year) will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

A copy of the final rule, as well as other information, can be found on the U.S. Department of Labor's website.

## **In Light of these Final Regulations, Employers MUST Analyze the Following:**

1. How many of your current employees are affected by this final rule?
2. Is a salary increase for those who do not currently meet the salary requirement a plausible financial decision to the required increases?

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3. Are there job positions that should now be reclassified as non-exempt and the employees will now be entitled to overtime if they work over 40 hours?
4. Review your handbooks and policies regarding exempt and non-exempt status.
5. Tighten up your policies regarding working overtime and analyze the possibility of limiting the number of overtime hours worked for non-exempt employees.
6. Review and update policies and practices concerning "off the clock" time and ensure that there are proper controls regarding all hours actually worked by non-exempt employees.
7. Review benefits applicable to exempt and non-exempt employees and how a change in status may impact the benefits to your employees.

**Employers have OPTIONS Regarding these Proposed DOL Changes:**

1. Increase the employee's salary to meet the new regulations so the employee continues to meet the exemption;
2. Keep the salary the same and pay the required overtime payments based on the employee's regular rate of pay when the employee works over 40 hours (but you must track all hours worked);
3. Reduce the employee's salary or change the employee's pay to a lower hourly rate so the total earnings do not change after overtime is paid;
4. Eliminate the employee working any overtime hours; or
5. Some combination of the above options including possible Reductions in Force.

Legal counsel will be able to assist employers in navigating these business changes.

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