

Overtime Exempt & Non-Exempt Employees as of December 1, 2016



Presented by: **RMS Accounting**
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What is New

Increased Minimum Pay Requirements for Exempt Employees



The U.S. Department of Labor issued new regulations, effective December 1, 2016 that increases the minimum compensation of overtime exempt executive, administrative and professional (“EAP”) employees to

\$47,476 per year or \$913 per week to qualify as a salaried employee exempt from overtime pay.

Highly Compensated Employees (“HCE”) Base Increased



The Highly Compensated Employee compensation base increases to \$134,004 annually beginning December 1, 2016. To be exempt as a HCE, the employee must receive standard salary amount of at least \$913 per week in addition to other compensation and meet a minimal duties test.

Compensation Amounts Indexed for Inflation

The new DOL regulations establish a mechanism for the automatic updating of the salary and compensation levels every three years to the required percentiles.

Who is Exempt from OT

Executives are Exempt if:

- 1) They meet the minimum salary requirement of \$47,746 per year, \$913 per week AND;
- 2) Their primary duty is managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise AND;
- 3) They customarily and regularly direct the work of at least two or more other full-time employees or their equivalent AND;
- 4) They have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other

change of status of other employees must be given particular weight.

Administrators are Exempt if:

- 1) The employee meets the minimum salary requirement of \$47,746 per year, \$913 per week AND;
- 2) The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers AND;
- 3) The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professionals are Exempt if:

- 1) The employee meets the minimum salary requirement of \$47,746 per year, \$913 per week AND;
- 2) The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment AND;
- 3) The advanced knowledge must be in a field of science or learning AND;
- 4) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Computer Professionals are Exempt if:

- 1) The employee must be compensated either on a salary or fee basis (as defined in the regulations) at a rate not less

than \$913 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour AND;

- 2) The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below AND;
- 3) The employee's primary duty must consist of:
 - o The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications OR;
 - o The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications OR;
 - o The design, documentation, testing, creation or modification of computer programs related to machine operating systems OR;
 - o A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Salespersons are Exempt if:

- 1) The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer AND;
- 2) The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees are Exempt if:

- 1) They are performing office or non-manual work and paid total annual compensation of \$134,004 or more (which must include at least \$913 per week paid on a salary or fee basis) AND;

- 2) They must customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue Collar Workers ARE NEVER Exempt:

The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Non-Exempt Employees Must Be Paid Based On Actual Hours Worked:

Tracking of hours worked and overtime pay at time and a half is required for all workers that do not meet the requirements of one of the exemptions covered here.

Time and a half applies to hours worked in excess of 40 hours per week. Be sure to also check your states Overtime requirements as well.

Questions & Answers

Q. We currently pay employees every 2 weeks. Will our pay periods need to switch to every week?

- A. **No. Employers may still pay their employees on a biweekly basis. An employer's overtime pay obligation is determined on a week-by-week basis, but they may pay their employees on a biweekly basis.**
- Q. **I have an employee that works 50 hours a week on exempt status. He will be moved back to hourly, and will get a pay reduction. This will help us to maintain his current weekly wage. Is this something that we can do and be in compliance with FLSA.**
- A. **Employers have a range of options for responding to the updated standard salary level. For each affected employee newly entitled to overtime pay, employers may:**
- increase the salary of an employee who meets the duties test to at least the new salary level to retain his or her exempt status;
 - pay an overtime premium of one and a half times the employee's regular rate of pay for any overtime hours worked;
 - reduce or eliminate overtime hours;
reduce the amount of pay allocated to base salary

Have More Questions

Call the experts at RMS Accounting
we are here to make sense of it for
you.

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