DOL Overtime Rule Basics for Members

WORKING for YOU.

On April 23, 2024, the U.S. Department of Labor (DOL) released its final rule changing the salary threshold at which employees can qualify for "white collar" and "highly compensated employee" (HCE) exemptions from overtime and minimum wage requirements. The new rule does not impact employees who are currently considered "non-exempt" (i.e. legally required to receive overtime and minimum wage pay). Big "I" member agencies and state associations, along with all other employers, have until July 1, 2024, to comply with the new overtime rule.

The federal law that regulates employment issues for most employees is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage (currently $7.25/hour), overtime pay, record-keeping, and youth employment standards covering employees in the private sector and in federal, state, and local governments. Overtime pay at one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

The new DOL rule increases the salary threshold for exemption for executive, administrative, and professional workers from the current $684 per week ($35,568 annually) to $844 per week ($43,888 annually) and again to $1,128 per week ($58,656 annually) in a two-tiered process, while also updating the HCE compensation threshold.

DATE	STANDARD SALARY LEVEL	HIGHLY COMPENSATED EMPLOYEE TOTAL ANNUAL COMPENSATION THRESHOLD
Before July 1, 2024	$684/week ($35,568/year)	$107,432/year, including at least $684/week paid on a salary or fee basis
July 1, 2024	$844/week ($43,888/year)	$132,964/year, including at least $844/week paid on a salary or fee basis
January 1, 2025	$1,128/week ($58,656/year)	$151,164/year, including at least $1,128/week paid on a salary or fee basis
July 1, 2027, and every 3 years after	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update

Having a salaried employee does not make that employee exempt from FLSA overtime requirements. To determine if a position is exempt from overtime, the position must satisfy three criteria:

1. Be paid a salary, meaning that they are paid a predetermined and fixed amount that is not subject to reduction because of variations in the quality or quantity of work performed (the "salary basis test");

2. Be paid at least a specified weekly salary level (the "salary level test"); and

3. Primarily perform executive, administrative, or professional duties, as provided in the DOL regulations (the "duties test").

WHAT ARE THE "DUTIES TESTS" AND HOW ARE THEY MET?

Executive, administrative and outside sales exemptions (those exemptions most common for insurance agencies) must satisfy a “duties test”. Those are outlined below. It is important to have clear job descriptions that are regularly reviewed against actual job duties for all employees for which the employer is claiming exempt status. The classification of any individual employee is on a case-by-case basis depending on that employee’s specific job duties, state, and federal law. Employee classification is not determined by job title alone; it is a fact specific inquiry.

Exemptions - all of the following tests must be met for each exemption to apply:

Executive

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than the weekly standard level;
- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must 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.

Administrative

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than the weekly standard level;
- 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
- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Outside Sales

- 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 consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer’s place or places of business.

** Note that the salary requirements of the regulation do not apply to the outside sales exemption.*

WHEN WOULD THE HCE EXEMPTION APPLY?

The HCE test combines a high compensation requirement with a less-stringent duties test. Highly compensated employees performing office or non-manual work and meeting the annual compensation threshold (which must include at least the weekly standard level paid on a salary or fee basis) are exempt from the FLSA if they 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.

WHAT IF THE RULE CONFLICTS WITH THE LABOR LAWS IN MY STATE?

Please be mindful that states also have their own employment laws that may impose additional or different requirements beyond the federal requirements, which are not covered in this document.

CAN NONDISCRETIONARY BONUSES AND INCENTIVE PAYMENTS BE USED TO SATISFY THE STANDARD SALARY LEVELS? (from DOL guidance)

Employers may use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard or special salary levels. For example:

- Beginning July 1, 2024, when the standard salary level is $844 per week, employers may use such payments to satisfy up to $84.40 of the $844 per week threshold but must still pay at least $759.60 per week on a salary basis.
- Beginning January 1, 2025, when the standard salary level is $1,128 per week, employers may use such payments to satisfy up to $112.80 of the $1,128 per week threshold but must still pay at least $1,015.20 per week on a salary basis.

For employers to credit nondiscretionary bonuses and incentive payments toward the salary level test, they must be paid on an annual or more frequent basis. The employer may use any 52-week period, such as a calendar year, a fiscal year, or an anniversary of the hire year. Employees who are exempt under the HCE test must receive at least the full standard salary amount on a salary or fee basis. The HCE test does not permit any portion of this salary amount to be satisfied by nondiscretionary bonuses or incentive payments.

Nondiscretionary bonuses and incentive payments (including commissions) are forms of compensation promised to employees to induce them to work more efficiently or to remain with the company. Examples may include individual or group production bonuses, and bonuses for quality and accuracy of work. Incentive payments, including commissions, are also considered nondiscretionary as such payments are generally based on a prior contract or understanding, and employees generally have a contract right to the commission promised. By contrast, discretionary bonuses are generally paid without prior contract, promise, or announcement, and the decision to provide the bonus and the payment amount is at the employer's sole discretion. An example would be an "on-the-spot" award made without announcement and at the employer's sole discretion (e.g., an unannounced year-end bonus). Discretionary bonuses cannot be used to satisfy any part of the salary level requirement.

WHAT IF BONUSES DO NOT TAKE AN EMPLOYEE PAST THE STANDARD SALARY THRESHOLD?

If an employee does not earn enough in nondiscretionary bonus or incentive payments in a given year (52-week period) to retain his or her exempt status, the rule permits the employer to make a "catch-up" payment within one pay period of the end of the 52-week period. This payment may be up to 10 percent of the total standard salary level for the preceding 52-week period. Any such catch-up payment will count only toward the prior year's salary amount and not toward the salary amount in the year in which it is paid. If such a catch-up payment is not made within the time frame allotted, the exemption is lost and overtime premium pay must be paid for any week the employee worked more than 40 hours.

DOES THIS IMPACT THE OUTSIDE SALES EXEMPTION?

No. The Outside Sales exemption does not have a salary threshold.