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## US Department of Labor finalizes overtime rules for salaried-exempt employees

The US Department of Labor (the Department) in September 2019 issued long-awaited [final regulations](#) that extend federal overtime pay to workers, an effort that was thwarted in 2016 when the courts halted changes implemented by the Obama Administration that would have gone into effect December 1, 2016. Had the 2016 rule changes proceeded forward, the salary threshold for salaried-exempt employees, which would have been adjusted every three years for inflation, would have been \$913 per week (\$47,476 per year). Additionally, the annual salary threshold at which the salaried-exempt duties' test is relaxed for certain highly-compensated employees would have been \$122,148 per year (up from the current \$100,000). It was estimated that the 2016 rule changes would have extended overtime pay to an estimated 4.2 million employees.

### ► The final overtime rule changes:

The Department under the Trump Administration has implemented milder changes to the rules expanding overtime pay to an [estimated](#) 1.3 million (as compared the estimated 4.2 million under the 2016 rule change). The Department states that in developing these rule changes, it relied on extensive public input including six in-person listening sessions held around the nation and more than 200,000 comments.

Following are highlights of the changes that are effective on January 1, 2020.

- Increase the minimum salary required for an employee to qualify for exemption from the currently-enforced level of \$455 to \$684 per week (equivalent to \$35,568 per year).
- Increase the total annual compensation requirement for “highly compensated employees” (HCE) from the currently-enforced level of \$100,000 to \$107,432 per year.
- Allows employees to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, in recognition of evolving pay practices.
- Revises the special salary levels for workers in U.S. territories and the motion picture

industry as follows:

–*U.S. territories.* The Department is maintaining a special salary level of \$380 per week for American Samoa because minimum wage rates there have remained lower than the federal minimum wage. Additionally, the Department is setting a special salary level of \$455 per week for employees in Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

–*Motion picture industry.* The Department also is maintaining a special “base rate” threshold for employees in the motion picture producing industry. Consistent with prior rulemakings, the Department is increasing the required base rate proportionally to the increase in the standard salary level test, resulting in a new base rate of \$1,043 per week (or a proportionate amount based on the number of days worked).

- Future updates to the standard salary and HCEs total annual compensation levels will occur more regularly in the future through notice-and-comment rulemaking.

► **Resources:**

- [Federal Register notice for the final rule](#)
- News release (9/24/2019): [U.S. Department of Labor Issues Final Overtime Rule](#)
- Wall Street Journal (9/24/19): [More Overtime Pay May Be Coming Your Way](#) by Patrick Pizzella
- [Fact sheet](#)
- [Frequently asked questions](#)
- [Small Entity Compliance Guide](#)
- [Learn more about overtime pay](#)

► **Employment tax considerations:**

Employers should consider the extent these changes will increase their employment tax expense.

The unemployment insurance wage base and/or tax rate schedules are tied directly to the average annual wage in some states (e.g., Washington), and in these states, higher overall wages could mean a bump in employers’ unemployment insurance taxes.

If additional employees are hired to avoid overtime costs, employers should consider the employment tax impact of restarting the wage base for added employees (e.g.; Social Security and unemployment/disability insurance).

## Contact us for more information

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