

Next Steps for Employers Following DOL's Overtime Final Rule

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The federal Department of Labor (DOL) has issued its Final Rule on regulations governing overtime pay for white collar employees, which it estimates will impact more than 43 million U.S. workers.

Before the rule goes into effect on December 1, 2016, employers must assess their organizations and compliance plans regarding pay, assignment of duties, and organizational flow to ensure compensation for their employees complies with the Final Rule. It is also critical they assess previous classifications that may impact their employees earning overtime pay.

How can an organization ensure compliance with the Final Rule?

Employers should perform a wage and hour audit to ensure that people are paid within the law. This includes analyzing actual duties performed by an employee to determine if he or she meets certain designated exemptions: professional, executive, administrative, computer, teaching professionals, outside salespeople, and a few others.

This analysis is complex, and should involve legal advice in the process.

What does the Final Rule establish?

Following the December 1 effective date, employees earning less than \$47,476 per year, regardless of whether they are hourly or salaried employees, must be eligible to earn overtime regardless of assignments, duties, or titles.

Employers must review all employees between the former bottom threshold of \$23,660 and the new top threshold of \$47,476. Those who earn more than the annual threshold may be exempt from overtime, provided they meet certain duties tests already established by law.

The Final Rule also resets the highly compensated exemption from \$100,000 to \$134,004 and implements a mechanism for reassessment of these thresholds every three years. Employers will, however, be able to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level.

What are employers' options based on this Final Rule?

Essentially, employers will have to reconsider pay, compensation, and duties for each employee who fits in this wage range, which could be overwhelming.

Possible action items include:

- Increasing total compensation to \$47,476 following an attorney evaluation of duties under a wage and hour audit to maintain an exemption
- Awarding employees overtime every time they work in excess of 40 hours in a pay period
- Moving management functions to reflect pay rates
- Overhauling policies regarding overtime
- Adapting former managers who are reclassified to be punch in and punch out
- Educating these employees on attendance, a step we strongly recommend
- Managing employee morale through change in the organization

McGlinchey Stafford's [Labor and Employment team](#) can help you review these issues or assist with compliance needs.

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Magdalen Blessey Bickford

Steve Beiser

Kathy Conklin