



update

Public Sector Compliance News for Employers

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Key Steps in the Countdown to Compliance with the DOL's Final Updated Rule on Overtime Pay

The Department of Labor (DOL) recently announced its long-awaited final updated rule governing which white-collar workers are eligible for overtime pay under the Fair Labor Standards Act (FLSA).¹ Overtime pay is 1.5 times the pay rate and must be paid for hours worked in excess of 40 hours per week for nonexempt employees. All employers must comply with the new requirements no later than December 1, 2016.

Key Provisions of the Final Rule

The final rule is intended to modernize and simplify overtime requirements and ensure the FLSA's intended protections are fully implemented. To accomplish this, the DOL has:

- Set the standard amount for the salary level test at the 40th percentile of weekly earnings for full-time salaried workers, which is \$47,476 per year or \$913 per week. All employees whose full-time salary is below that rate are eligible for overtime pay under the new standard.
- Established a mechanism to update the salary for the salary level test automatically every three years, beginning in 2020.
- Increased the total compensation requirement, including bonuses and commissions, needed to exempt highly compensated employees (HCEs) to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers, which is \$134,004.

The FLSA requirements are minimums. The FLSA does not preempt any state standards that are stricter.

Options for Complying with the Final Rule

Public sector employers have several options for complying with the final rule on overtime pay under the FLSA:

- Pay overtime or *provide comp time*² for overtime hours worked in excess of 40 per week by employees who pass the duties test and have salaries that are below the new threshold.³

¹ The final rule was published in the [May 23, 2016 Federal Register](#).

² The option to provide comp time instead of cash overtime payments is only available to public sector employers.

³ According to the DOL, paying overtime or comp time works well for employees who usually do not work overtime, but have occasional "spikes" or periods that require overtime hours. The new rules allow employers flexibility with respect to how to record these overtime hours. See the DOL's publication, "[Overtime Final Rule and State and Local Governments](#)."



Regulatory Guidance Highlights:

- The new salary threshold is \$47,476, which is a considerable increase from the previous threshold: \$23,660.
- Starting in 2020, the threshold will increase automatically every three years.
- The duties test — the job must primarily involve executive, administrative or professional duties — is unchanged.
- The salary threshold for highly compensated employees is \$134,004, up from \$100,000.
- The implementation deadline is December 1, 2016.

- Raise salaries for employees who pass the duties test and have salaries that are close to the new threshold.
- Redistribute work so no employee who would otherwise be eligible for overtime pay has to work overtime.

Action Items

Conducting an impact analysis should be the immediate next step for employers that have not already done so. An impact analysis involves:

- Conducting a detailed cost analysis for increasing salaries up to the new minimum threshold vs. paying additional overtime;
- Identifying potential salary compression⁴ and equity issues; and
- Identifying processes that may need to be redesigned to support effective timekeeping and tracking of hours worked and overtime.

The impact analysis should be followed by development of an implementation strategy, which includes:

- Developing organizational redesign strategies where needed;
- Identifying potential morale, recruitment and retention issues as a result of the changes;
- Developing resources and training programs for managers and employees; and
- Creating a comprehensive communication strategy and plan.

How Segal Can Help

Segal Waters, the public sector human resources practice of Segal Consulting, works with employers to develop custom solutions to the full range of human capital needs. As a leader in helping employers to prepare for and implement the new FLSA overtime changes, our professionals can assist you with:

- **Compliance** Conducting FLSA impact analyses is a key aspect of compliance with the overtime rule. Segal can also assist employers with their strategies to avoid the employer shared responsibility penalty under the Affordable Care Act.⁵
- **Redesign** This includes organizational design and restructuring and process redesign, reengineering and improvement.
- **Compensation** We help with planning, market assessment and salary structure design. In addition, we assist employers in developing pay guidelines and policies.
- **Workforce Solutions** Segal can help create and support the processes necessary to reclassify jobs in light of the new standards. We can also develop workforce and succession planning tools, as well as recruitment and retention strategies.
- **Performance Management** Our professionals assist employers with the design and implementation of performance-management structures, approaches, programs and tools.

“Conducting an impact analysis should be the immediate next step.”

“Because the Affordable Care Act requires employers with more than 50 employees to measure whether a worker is full-time... the FLSA analysis should take into consideration the Affordable Care Act process the employer has developed.”

⁴ Salary compression is the situation that occurs when there is a similarity of salaries despite different qualifications and/or experience levels. Two common examples of salary compression include: (1) when the pay of one or more employees is very close to the pay of more experienced employees in the same job and (2) when employees in lower-level jobs are paid almost as much as their colleagues in higher-level jobs, including managerial positions.

⁵ Because the Affordable Care Act requires employers with more than 50 employees to measure whether a worker is full-time (more than 30 hours per week or 130 hours per month) the FLSA analysis should take into consideration the Affordable Care Act process the employer has developed.

- **Training and Development** We can assist with developing a training strategy and approach, as well as designing training content.
- **Culture Transformation** This includes employee engagement strategies and employer-of-choice initiatives.
- **Change Management** Our professionals assist jurisdictions with planning change management and provide support during the change. We also help employers develop and execute employee communications strategies.

Questions?

For more information about how these new rules may affect your jurisdiction, please contact Elliot Susseles, National Practice Leader of [Segal Waters](#), at esusseles@segalco.com or 202.833.6436.

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