

Fair Labor Standards Act

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I heard the FLSA overtime law changed. What changed, and what should I do?

The federal Fair Labor Standards Act (FLSA) requires, among other things, overtime compensation for non-exempt employees who work more than 40 hours in a week.

On the other hand, exempt employees are not entitled to overtime compensation. To be exempt, an employee must (1) perform exempt job duties, as defined in the law and (2) be paid a minimum salary.

The new law did not change the duties tests. However, the salary minimum did change: It used to be that an exempt employee had to make a minimum salary of \$455/week (\$23,660/year). The new law, effective December 1, 2016, now requires **a minimum salary of \$913/week (\$47,476/year)**.

Therefore, if your employee meets an exempt duties test, but does not make at least the minimum \$913/week salary, that employee is not exempt anymore! This employee is now non-exempt, and must be paid overtime compensation for working more than 40 hours per week.

Don't panic! The impact of the rule change may be less significant than you anticipate. Follow these steps to determine what, if anything, you need to change:

1. Identify employees who meet an exempt job duties test.
2. Of those employees, identify the employees who will no longer meet the salary minimum.
3. Determine which of these employees works more than 40 hours per week. If you have employees who will no longer be exempt and work overtime, you have several options, including:
 - Increase their salary to meet the new salary minimum
 - Pay overtime compensation when applicable
 - Pay compensatory time instead of overtime wages: State or local government agencies may pay compensatory time off at a rate of not less than one and one-half hours for each overtime hour worked, instead of cash overtime pay. Employees — other than law enforcement, fire, and emergency personnel — may accrue up to 240 hours. An employee must be permitted to use compensatory time on the date requested unless doing so would “unduly disrupt” the operations of the agency.

Important! The validity of the new rule is being challenged in court. On November 22, 2016, a federal district court judge in Texas issued a nation-wide preliminary injunction to stop the implementation of the rule. This case is not over, and, therefore, the fate of the new FLSA overtime rule is unclear. NHMA will continue to monitor the situation and keep you apprised of the latest available information. □