

## **Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemptions for Executive, Administrative, and Professional Employees**

The Department of Labor (Department) is updating and revising the regulations issued under the Fair Labor Standards Act (FLSA) to allow 1.3 million workers to become newly entitled to overtime by updating the earnings thresholds necessary to exempt executive, administrative or professional employees from the FLSA's minimum wage and overtime pay requirements.<sup>1</sup>

The Department is updating both the minimum weekly standard salary level and the total annual compensation requirement for "highly compensated employees" to reflect growth in wages and salaries. The new thresholds account for growth in employee earnings since the currently enforced thresholds were set in 2004. The Department believes that the update to the standard salary level will maintain the traditional purposes of the salary level test and will help employers more readily identify exempt employees. The Department is also revising the special salary levels for employees in U.S. territories and the special base rate for employees in the motion picture producing industry. The Department estimates that as a result of the final rule 1.3 million currently exempt employees will become nonexempt.

### **\* Key Provisions of the Final Rule \***

The final rule updates the salary and compensation levels needed for workers to be exempt in the final rule:

1. raising the "standard salary level" from the currently enforced level of \$455 to \$684 per week (equivalent to \$35,568 per year for a full-year worker);
2. raising the total annual compensation level for "highly compensated employees (HCEs)" from the currently-enforced level of \$100,000 to \$107,432 per year;
3. allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10 percent of the standard salary level, in recognition of evolving pay practices; and
4. revising the special salary levels for workers in U.S. territories and in the motion picture industry.

Additionally, the Department intends to update the standard salary and HCEs total annual compensation levels more regularly in the future through notice-and-comment rulemaking.

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<sup>1</sup> On May 23, 2016, the Department issued a final rule increasing the standard salary level, among other changes. That rule was declared invalid by the United States District Court for the Eastern District of Texas, and an appeal of that decision to the United States Court of Appeals for the Fifth Circuit was held in abeyance pending the completion of the Department's rulemaking. Due to the district court's decision, the Department is currently enforcing the regulations in effect on November 30, 2016. In the final rule, the Department formally rescinds the 2016 final rule.

## **Standard Salary Level**

The Department is setting the standard salary level at \$684 per week (\$35,568 for a full-year worker). The salary amount accounts for wage growth since the 2004 rulemaking by using the most current data available at the time the Department drafted the final rule. The Department is updating the standard salary level set in 2004 by applying to current data the same method and long-standing calculations used to set that level in 2004—*i.e.*, by looking at the 20th percentile of earnings of full-time salaried workers in the lowest-wage census region (then and now the South), and/or in the retail sector nationwide.

## **HCE Total Annual Compensation Requirement**

The Department is setting the total annual compensation requirement for HCEs at \$107,432 per year. This compensation level equals the earnings of the 80th percentile of full-time salaried workers nationally. To be exempt as a HCE, an employee must also receive at least the new standard salary amount of \$684 per week on a salary or fee basis (without regard to the payment of nondiscretionary bonuses and incentive payments).

## **Special Salary Levels for Employees in U.S. Territories and Special Base Rate for the Motion Picture Producing Industry**

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.

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).

## **Treatment of Nondiscretionary Bonuses and Incentive Payments**

In the final rule, in recognition of evolving pay practices, the Department also permits employers to use nondiscretionary bonuses and incentive payments to satisfy up to 10 percent of the standard salary level. For employers to credit nondiscretionary bonuses and incentive payments toward a portion of the standard salary level test, they must make such payments on an annual or more frequent basis.

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 Department 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.

## **Updating**

Experience has shown that fixed earning thresholds become substantially less effective over time. Additionally, lengthy delays between updates necessitate disruptively large increases when overdue updates finally occur. Accordingly, in the final rule the Department reaffirms its intent to update the earnings thresholds more regularly in the future through notice-and-comment rulemaking.

The Department's final rule is available at <http://www.dol.gov/whd/overtime2019>.

**For additional routine information outside of the rule making, visit our Wage and Hour Division Website: [www.wagehour.dol.gov](http://www.wagehour.dol.gov) and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).**

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