



U.S. Department of Labor: Final Overtime Rules

By Bobbi Kloss

The U.S. Department of Labor (DOL) today released the new rules raising the nation's exempt salary threshold from 455 per week/\$23,660 to \$913 per week/\$47,476 annually. This is the first time since 2004 that the white collar overtime regulations have been updated.

This new standard salary level has been set to be equal to the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region. It will allow for automatic updates every three years, beginning January 1, 2020. These updates will be based upon the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region which is currently the South.

The new rule has increased the salary threshold for certain Highly Compensated Executives to \$134,004 per year which is equal to the annualized value of the 90th percentile of earnings for full-time salaried workers nationally.

Employers will be able to use nondiscretionary bonus, incentive pay and commission to satisfy up to 10% of the standard salary level. This is the first time employers will be able to use this method to satisfy the standard salary level. Payment must be paid on a quarterly or more frequent basis to be eligible.

This new ruling which will take effect for employers on December 1, 2016 includes a limited non-enforcement policy from December 1, 2016 to March 17, 2019 for providers of Medicaid-funded services for individuals with intellectual or developmental disabilities in residential homes and facilities with 15 or fewer beds.

The overtime salary threshold is one factor in determining if an employee qualifies for overtime pay. There have been no changes to the standard duties test.

"The Department believes that the increase to the standard salary level, coupled with automatic updating in the future, will address concerns that some workers who satisfy the standard duties test should be entitled to the overtime pay because they are performing substantial amounts of overtime-eligible work."

[Check out the Q&As on the United States Department of Labor website.](#)

While time is needed to review the full regulations released, employers need to determine how the new overtime regulations will affect their work force.

If not already done, the following actions steps can help you determine the impact to your organization:

1. Identify employees currently classified as exempt who will fail the new salary test.
2. Model potential costs based on possible response (e.g. raise pay to new threshold level, reclassify as nonexempt and pay overtime, or lower pay to offset overtime requirement).
3. Review job descriptions and tasks of impacted positions to determine if certain exempt tasks and responsibilities may be reassigned or maintained with the current position.
4. Consider how pay changes or other changes in job assignments may impact your organization (e.g., pay compression with next level, supervisory career paths).
5. Develop administrative implementation plans including payroll and HRIS systems, in order to ensure compliance and maintain compliance with the three-year automatic update provisions.

It is important to know that misclassifications in these white-collar exemptions categories happen often. As you apply the new salary guidelines, also know that salary level is just one criterion for exemption from overtime. The standard duties test can be hard to apply especially for administrative and lower-level management positions. These positions typically carry non-exempt duties that can push the allowable 50% threshold and some duties can be hard to classify as exempt duties with the confines of the DOL regulations. Since these groups consistently average over 40 hours per work week - pushing upwards of 50-60 hours, employers will need to ensure that the positions are correctly categorized as exempt from the overtime provisions of the FLSA applying both the salary threshold and the standard duties test.

If employers find that certain positions no longer meet the standards set out in the white collar exemption, they are required to either (1) readjust duties and compensations to re-qualify their employee or, (2) the position(s) need to be reclassified as non-exempt and the employee(s) are required to receive overtime pay for all hours worked over 40 hours in a work week.

Then, once compliant, stay compliant. Job descriptions should be audited on an annual basis. Many employers though do not make this a HR audit task item. Yet, job descriptions are an important business tool. Making annual audits of your job descriptions a priority can keep you one step ahead in your business practices. The ROI is high. Simply by monitoring your job description process, not only are you ensuring that you are compliant with current wage and hour laws and regulations by correctly categorizing and paying employees, you are also ensuring that the work performed is aligned with the current needs of the company. You can then, effectively manage your recruiting practices by hiring the right people for the job as well as efficiently administer your performance management process by coaching employees for top performance.



BOBBI KLOSS
HR Management Director

With more than 20 years of Human Resource Generalist & Managements experience, Bobbi Kloss serves as the Human Resources Management Director for [Benefit Advisors Network \(BAN\)](#). With a deep understanding of the increasingly complex and diverse HR industry, Kloss provides her expertise to BAN's employee benefit brokerage members as well as their employer clients. She oversees all HR-related functions for the association, initiating pro-active, strategic compliance practices, which limits exposure in all areas of potential liability for BAN members and their clients. Her analytical, process, and project management techniques allow her to adapt quickly to culture and industry, offering solutions to all HR issues.

Ms. Kloss has a strong employment law background and is well versed in all areas of HR practices including: health & welfare, compensation, talent management, employee relations, organizational design, and learning and development. She has handled these aspects of Human Resources for a variety of industries, including P.E.O., hospital, telecommunications, call centers, medical offices, non-profit, bio-medical, manufacturing, construction engineering, and IT.

Previously, Ms. Kloss served as a compliance paralegal conducting internal EEO, DOL and State Wage and Hour investigations and mediating settlements with the Department of Labor, EEOC, and local governing agencies. She has also held senior-level HR positions with Baptist Health System. In these previous positions, she has led cross-departmental teams in developing, driving and managing HR practices, HRIS, Payroll, ATS, and Benefit Systems. She has also developed, administered, and managed programs and staff for single and multi-site locations for small-medium size business including start-up, mergers and acquisitions, and fast growth companies.

She is a member of the Society of Human Resource Management (SHRM) and World at Work. As a known industry expert, Kloss is also a frequent speaker at industry conferences and provides commentary in mainstream, national trade journals on HR and compliance-related issues.

Bobbi is also involved in giving back to the community. She founded the non-profit Heritage Children San Antonio in 2003 to help at-risk youth develop necessary life skills. She also volunteers her time mentoring young adults and women in abusive and addictive behavior recovery as well as young adults who are aging out of the foster care system.