

Checklist For Complying With The Federal Overtime Rule

In May of 2016, the U.S. Department of Labor (DOL) announced the highly anticipated federal overtime rule under the Fair Labor Standards Act (FLSA). The final rule changes the salary level that must be met before an employee can be exempt from overtime under the so-called white collar exemptions (administrative, executive and professional). The minimum salary threshold will increase to **\$913 per week** (\$47,476 annually for a full time employee). Any employee paid less than this threshold amount will not be considered exempt and therefore will be guaranteed overtime pay. The final rule is effective December 1, 2016.

This federal salary threshold is higher than California's [minimum salary threshold](#) for the white collar exemptions. To claim an exemption from both California and federal law, an employee will need to meet whichever salary threshold is higher.



Effective December 1, 2016, an employee will need to meet the higher federal salary threshold of \$913 a week (\$47,476/year) in order to be classified as an exempt administrative, executive or professional employee under both California and federal law. California employees must continue to meet California's strict duties test, in addition to the salary test.

Advance preparation is essential. Navigating the terrain between California and federal rules can be complicated. Employers must comply with the law that gives the most protection to the employee.

The following is a brief checklist that can help you prepare:

- Conduct an audit to determine which of your currently exempt employees fall below the federal salary threshold of \$913 a week (amounts to \$47,476 a year for a full time employee).
 - This analysis applies to those employees that you have classified as exempt under the executive, administrative or professional exemption. It does not apply to the computer professional exemption or the sales exemptions.
- If the employee is below the federal salary threshold you can:
 - Increase salary to maintain exempt status.
 - Reclassify to non-exempt, pay overtime and comply with all other rules governing nonexempt employees, such as meal and rest break requirements.
- If you want to maintain exempt status:
 - Raise salary to maintain exemption.
 - Review California's strict duties test to make certain that the employee also meets this test. To qualify for the exemption, the employee must meet salary threshold and duties tests. Over 50% of the employee's time must be spent engaged in exempt duties. Now is a good time to make sure you have the [proper classification](#) and reclassify if necessary.
 - Remember that exempt/nonexempt classification is done **per job**. Don't assume that because an employee is in a job category that has traditionally been exempt that the employee is automatically exempt. Again, examine the actual job duties for the particular position. Job title is also irrelevant – actual work performed is what matters.

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- Determine the overall impact of increasing salaries on your organization's pay structure.
 - For example, if you raise the salary of a retail manager to meet the federal salary threshold, what effect does this have on his supervisor's or the regional manager's salary? What is the impact on other pay grades?
- Consider the effect of pay changes or reclassification on morale and retention.
- Consider [Fair Pay Act](#) issues if you decide to raise salaries.
 - Under the California Fair Pay Act, you are prohibited from paying any of your employees an amount less than employees of the opposite sex for "substantially similar work."
- Consider the impact of future California minimum wage increases on the salary threshold analysis. You will need to comply with whichever salary threshold is higher.
 - Refer to [California Minimum Wage and California vs. FLSA Minimum Salary Thresholds Through 2023](#).
- Ensure that any newly non-exempt employees understand [California specific wage and hour rules](#), such as rules on [meal and rest breaks](#) and [timekeeping](#), that will now apply to them. For instance, a formerly exempt employee may be used to working through lunch and not keeping track of his/her time. Provide training as necessary.
- Take measures to limit overtime to avoid increased costs.
 - Reorganize workloads.
 - Adjust schedules and hours worked if necessary.
 - Implement policies if you want to place controls on the amount of overtime worked by employees.
 - Require prior approval for all overtime (remember that even if an employee works unauthorized overtime you must pay him/her).
 - Require employees to accurately record time in, meals and time out.
 - Prohibit off-the-clock work.
 - Review your meal and rest break policies and practices.
 - Consider not providing smart phones or other devices that would allow or encourage nonexempt employees to work after hours. If nonexempt employees answer calls or respond to emails after hours, you have to compensate them for that time.
- Develop a communication plan for affected employees.
- Provide [written notice](#) of pay changes.
- Take note that December 1, 2016 falls on a Thursday. The entire workweek will need to meet the salary threshold. For example, if you have designated your workweek as Monday thru Sunday, you will need to start complying on Monday, November 28, 2016.