


White Collar Salary Exemption Doubles: Are You Ready?

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DUTIES TEST

- The Duties Test for exempt salaried employees did NOT change
- To qualify under these “white collar” exemptions, employees:
 - Must perform certain types of work as their primary job duties (the “duties test”) and
 - Generally be paid a minimum salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”)

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DETAILS OF CHANGES

- Specifically, the DOL:
 - Set the standard salary level at the 40th percentile of weekly earnings for full-time workers in the lowest income census region of the country (currently the south);
 - Allows up to 10% of the compensation to be bonus or commission, payable not less than quarterly
 - This will be adjusted every 3 years
 - Based on wage growth projections, the threshold is expected to rise to more than \$51,000 with the first adjustment date on Jan. 1, 2020
 - Increase the total annual compensation requirement needed to exempt highly compensated employees (HCEs) to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers (\$134,004 annually)
 - Establish a mechanism for automatically updating the salary and compensation levels going forward to ensure that they will continue to provide a useful and effective test for exemption

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IMPACT AND NEXT STEPS

- Will affect many employers with currently “exempt” employees who are paid less than \$47,476/year
 - Required to track and pay overtime regardless of job duties
 - Track time working while at home or on the road

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DETAILS OF CHANGES

- What should employers do? (cont.)
 - Conduct a cost-benefit analysis to either raise the salary or reclassify to non-exempt and pay overtime
 - Employers that reclassify employees should prepare communication pieces and discuss issues such as requiring approval for overtime work in advance and appropriate discipline.

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DETAILS OF CHANGES

- Use of technology and “off-the-clock” work
 - Reclassified employees will lose flexibility they currently enjoy to work remotely on electronic devices
- The proposed rules do not address this issue

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MORE SOLUTIONS

- Fluctuating Regular Rate Pay
 - Establish a weekly salary
 - Must pay that amount per week without regard to the hours worked, but overtime calculation rate diminishes with more hours worked.
- Example:
- \$500/45 hours = \$11.11 regular rate
 - Salary covers all hours worked at straight time. Add half time rate for hours over 40: $\$11.11 \div 2 = \5.56×5 hours = \$27.78 for overtime. Total comp. = \$527.78
 - Employees' hours flex from week to week
 - Regular rate of pay must not fall below minimum wage rate requirements

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MORE SOLUTIONS

- Determine Hourly Rate When Converting From Salary to Hourly Wage When Employee Customarily Works More than 40 Hours in a Week
 - Realistic review of number of hours anticipated to work in the majority of work weeks
 - Take the numbers greater than 2,080 in the year and multiply that by 1.5
 - Take sum of total hours and divide it into current salaried amount to determine hourly rate which should approximate current earnings
 - Example: employee earns \$40,000/year, works 50 hours/week, for a total of 2,600 hours per year. That is 520 hours above 2,080, so multiply 520 by 1.5 = 780. Add 780 to 2,080 = 2,860. Divide \$40,000 by 2860, which is approximately \$14/hr. A \$14/hour employee, on a 50 hour work week, could receive \$770/week, or \$40,040/year.

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WORKER MISCLASSIFICATION

- Uber drivers as independent contractors
 - Is Uber a technology company or a transportation company?
 - Driver's set their own hours of work, provide their own vehicles, are subject to little supervision

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2014 WAGE AND HOUR SETTLEMENTS

- \$56.5 million – Brinker Restaurant Corp.
 - 108,000 hourly workers
- \$26 million – Los Angeles City
 - 1,000 current and former city trash truck drivers who alleged ban on naps during meal breaks violated state labor laws
- \$23 million – Walgreen Co.
 - Failure to pay overtime for mandatory security checks and inadequate rest periods

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Questions?

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➤ **Step 1: Apply the salary basis test**

If the employee is paid \$455 per week (\$913 per week effective Dec. 1, 2016) that is not subject to reduction due to variations in quantity/quality of work performed, continue to Step 2

Computer professionals may be paid salary basis OR \$27.63 per hour. Other exceptions to the minimum salary requirement include outside sales employees, teachers, doctors, lawyers, business owners, administrative employees in educational establishments, employees in America Samoa and motion picture production industry employees.

➤ **Step 2: Determine which exemption applies**

Executive – Employee whose primary duty is to manage the business or a recognized department/entity and who customarily directs the work of two or more employees. Also includes individuals who hire, fire or make recommendations that carry particular weight regarding employment status. Examples: executive, director, owner, manager, supervisor.

Administrative – Employee whose primary activities are performing office work or non-manual work on matters of significance relating to the management or business operations of the firm or its customers and which require the exercise of discretion and independent judgment. Examples: coordinator, administrator, analyst, accountant.


Professional/Creative – Employee who primarily performs work requiring advanced knowledge/education and which includes consistent exercise of discretion and independent judgment. The advanced knowledge must be in a field of science or learning acquired in a prolonged course of specialized intellectual instruction. Creative professionals perform work requiring invention, imagination, originality and/ or talent in a field of artistic endeavor. Examples: attorney, physician, statistician, architect, biologist, pharmacist, teacher, author, editor, composer, musician, artist.

Computer professional – Employee who primarily performs work as a computer system analyst, programmer, software engineer or similarly skilled work in the computer field performing a) application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional specifications; or b) design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specification; or

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➤ Ancillary issues

1. Review state wage/hour laws for those states in which the organization operates to ensure there is no conflict with state laws.
2. Capture payroll costs and budgetary needs and evaluate whether costs and budgetary considerations will be the best met by raising incumbent salaries to retain exempt status (provided duties test is met), budgeting for overtime costs or hiring additional staff to eliminate the need for overtime.
3. Ensure HRIS systems are updated to accurately reflect employee's exempt/nonexempt classifications.
4. Review and honor collective bargaining agreements, where possible.

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