

# PREPARED FOR WHATEVER COMES NEXT

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### The New DOL Overtime Rules – Rhyming Employers into Compliance

Remember the old English Rhyme... *“Something olde, something new, something borrowed, something blue.”*

This rhyme can be an allegory for the new Department of Labor overtime rules that go into effect December 1st. This article will discuss in two parts what you need to know about these new DOL rules to remain complaint. This first part explains the *“Something olde, something new, something borrowed”* portion of the new rules. Part 2 will give you tips for not becoming too *“blue”* about compliance.

#### The “Something New”

The *“something new”* is the amount of salary that an exempt employee must be paid to be exempt from the overtime requirements. This minimum salary level is now increased to at least \$47,476 annually (or \$913 per week) for employees and \$134,004 for highly compensated employees (“HCEs”). Therefore, this rule is fairly straightforward - if the employee earns less than \$47,476 annually, the overtime exemption does not apply, and the employee must be paid overtime. The DOL plans on increasing this minimum salary threshold every three years.

The new rules also permit up to 10% of this minimum salary to be paid in nondiscretionary bonuses or incentives, including commissions. For example, if an employee is paid the new salary minimum of \$913 per week, \$822 of this must be paid as weekly salary (while the remainder can be paid as a nondiscretionary bonus, incentive or commission).

#### The “Duties Test” – *“Something olde...something borrowed”*

The DOL states that *“job titles never determine exempt status under the FLSA. Additionally, receiving a particular salary, alone, does not indicate that an employee is exempt from overtime and minimum wage protections.”*

The new rule, therefore, **DOES NOT** change the existing test for determining if a particular employee is employed in an exempt position. It only increases the minimum salary for the particular exemption.

In order to determine whether an employee is employed in an exempt position, the employee must meet the applicable “duties test” for the applicable exemption (either the executive, administrative or professional exemption, commonly referred to as the “EAP” or “white collar” exemptions). Therefore, each of these exemptions is contingent on:

- (1) The employee being paid on a salary basis;
- (2) The employee’s salary exceeding \$47,476 annually (or \$913 per week); **AND**
- (3) The employee meeting the applicable duties test for the specific exemption claimed.

#### Executive Employees

First, to be an “executive” employee, the employee must:

- (1) manage the enterprise, or manage a customarily recognized department or subdivision;
- (2) customarily and regularly direct the work of at least two other full-time employees (or equivalents); **AND**
- (3) have authority to hire or fire other employees or recommend hiring, firing or advancement.

For example, this generally includes employees who interview, select and direct the work of other employees.

#### Administrative Employees

To start, let us answer how this exemption is not satisfied - “administrative” does not mean an administrative assistant. Rather, it is an employee who works at a level where the employee’s primary duties include (1) performing office work directly related to the management or general business operations, and (2) exercising discretion and independent judgment regarding matters of significance. Administrative employees are typically employees working in functional areas such as finance, accounting, procurement, purchasing etc.

## Other Recognized Exemptions

- (1) **Highly compensated employees** – **must** earn more than \$132,004 annually. This new salary minimum requires at least \$913 per week to be paid on a salary basis. The remainder of the salary can consist of commissions and nondiscretionary bonuses. The HCE must also meet a “relaxed” duties test which requires the employee (1) to be employed in office as opposed to manual labor, and (2) to customarily and regularly perform at least one of the duties of exempt executive, administrative or professional employee.
- (2) **Outside sales** – **NO** minimum salary level applies. However, the employee must (1) have a primary duty that consists of making sales, obtaining orders or contracts and (2) must be customarily and regularly engaged away from employer’s place of business.
- (3) **Inside sales** (e.g. retail employees paid by commission) – **NOT** affected by the new rules. Instead, the employee must meet the requirements of Section 7(i) of the FLSA.
- (4) **Certain computer employees** earning more than \$913 a week (or \$47,476 annually) **OR**, if on an hourly basis, more than \$27.63 per hour.
- (5) **Learned or creative professionals** must be paid on a salary or fee basis of more than \$913 a week (or \$47,476 annually) and must meet the specific duty requirements for either a “learned” or “creative” professional. Other professionals such as doctors, lawyers and teachers are exempt regardless of their salary level.

**Points to remember:** As you analyze whether your employee is exempt under the new overtime rules, remember this simple test:

- (1) First, is the employee in (a) a position that passes the duties test by supervising others, (b) a recognized “administrative” position by exercising significant independent judgment, (c) a learned or creative professional, (d) an HCE, (e) a computer professional or (f) outside/inside sales?
- (2) If the answer is “no,” then the employee is not exempt, **regardless** of the salary level.
- (3) If the answer is “yes,” then you must determine if the employee meets the requisite salary level for the specific exemption.

### “Something Blue”

Watch for our next article where we hope to lessen your company’s overtime blues by offering tips for compliance with this new rule.

Haynes Benefits can evaluate your company’s exempt/non-exempt job positions. Please contact us at (816) 875-1919 if you would like to receive more information about this service.

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