

New Federal Overtime Rules Guide



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Background

The federal Fair Labor Standards Act (FLSA) provides an exemption from both minimum wage and overtime pay for employees employed as bona fide **executive**, **administrative**, and **professional** employees (white collar employees). To qualify for the exemption, a white collar employee generally must:

1. Be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the **salary basis test**);
 - **Note:** Administrative and professional employees may be paid on a **fee basis** rather than on a salary basis. If the employee is paid an agreed sum for a single job, regardless of the time required for its completion, the employee will be considered to be paid on a fee basis.
2. Be paid a minimum specified salary (the **salary level test**); and
3. Primarily perform executive, administrative, or professional duties, as defined in the federal regulations (the **duties test**).

Highly-compensated employees (HCEs) who are paid total annual compensation of a minimum specified amount and meet [certain other conditions](#) are also deemed exempt from the FLSA minimum wage and overtime pay requirements.

Important Note: *Job titles never determine exempt status. Receiving a particular salary, alone, does not indicate that an employee is exempt. Rather, in order for a white collar exemption to apply, an employee's specific job duties and earnings must meet all of the applicable requirements provided in the regulations. Keep in mind that when both the FLSA and a state law apply, the employee is entitled to the most favorable provisions of each law.*

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New Requirements For Claiming A White Collar Exemption

Effective December 1, 2016, a [new rule](#) revises the white collar exemption requirements as follows:

White Collar Exemption	Salary Basis Test	Salary Level Test	Employee Duties Test
Executive Employees	Employee must be compensated on a salary basis	Employee earns not less than \$913 per week (up to 10% of salary level may be satisfied using nondiscretionary bonuses, incentives, and commissions, that are paid quarterly or more frequently)	<ul style="list-style-type: none"> • Primary duty must be managing the enterprise in which the employee is employed, or managing a customarily recognized department or subdivision of the enterprise; • Must customarily and regularly direct the work of at least two other full-time employees (or their equivalent); <u>and</u> • Must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight.
Administrative Employees	Employee must be compensated on a salary basis or a fee basis	Employee earns not less than \$913 per week (up to 10% of salary level may be satisfied using nondiscretionary bonuses, incentives, and commissions, that are paid quarterly or more frequently) <u>Note:</u> Special rules apply for certain academic administrative personnel	<ul style="list-style-type: none"> • Primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; <u>and</u> • Primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.
Professional Employees	Employee must be compensated on a salary basis or a fee basis <u>Note:</u> Requirement does not apply to doctors, lawyers, or teachers	Employee earns not less than \$913 per week (up to 10% of salary level may be satisfied using nondiscretionary bonuses, incentives, and commissions, that are paid quarterly or more frequently) <u>Note:</u> Requirement does not apply to doctors, lawyers, or teachers	Must primarily perform work that either requires advanced knowledge in a field of science or learning (usually obtained through a degree), or that requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

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New Requirements For Claiming A Highly-Compensated Employee Exemption

The exemption requirements for [highly-compensated employees](#) are different than those applicable to executive, administrative, and professional employees. Effective December 1, 2016, the requirements for HCEs to qualify as exempt from the FLSA minimum wage and overtime pay requirements are as follows:

Total Annual Compensation	Salary Test	Employee Duties Test
Employee must earn at least \$134,004 annually, which may include commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned during a 52-week period	Employee must receive at least a standard salary amount of \$913 per week on a salary or fee basis	<ul style="list-style-type: none">• Primary duty must include performing office or non-manual work; <u>and</u>• Must customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.

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Comparison Of Current And New Overtime Exemption Requirements

The following chart highlights the key differences between the current regulations and the new final rule.

	Current Regulations (Effective from 2004 until December 1, 2016)	Final Rule (Effective December 1, 2016)
Salary Level Threshold for White Collar Employees	\$455 weekly	\$913 weekly
Highly-Compensated Employee (HCE) Total Annual Compensation Level	\$100,000 annually	\$134,004 annually
Automatic Salary/Compensation Level Adjusting	None	Every 3 years beginning on January 1, 2020
Bonuses	No provision to count nondiscretionary bonuses and commissions toward the standard salary level	Up to 10% of standard salary level can come from nondiscretionary bonuses, incentive payments, and commissions, so long as employers pay those amounts on a quarterly or more frequent basis
Employee Duties Test	U.S. Department of Labor Fact Sheet #17A describes the standard duties for white collar employees	No changes to the duties test

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