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## President Obama Emails: Here Come the New Overtime Rules

President Obama has now announced in an [email to supporters](#) the publication of the new final overtime rule significantly expanding the group of employees eligible for overtime. As [previously reported](#), the change has been highly anticipated and contested by businesses.

Effective Dec. 1, 2016, the [final overtime rule](#) changes the law as follows:

- Employees earning less than \$913 per week (\$47,476 per year) will now be entitled to 1.5 times pay for all overtime hours worked, absent certain limited exceptions for teaching professionals, practitioners of law or medicine, or – depending on their compensation structure – computer professionals and outside sales employees. Up to 10% of the new salary minimum may be met by non-discretionary bonuses, incentive pay, or commissions, provided these payments are made on at least a quarterly (not annual) basis. Catch-up payments on a quarterly basis are authorized in certain circumstances.
- To maintain an exemption from overtime as a “highly compensated employee,” salary must be \$134,004 (note: this is an increase over the prior proposed maximum of \$122,148). Highly compensated employees must be paid salary of \$913 per week, but non-discretionary bonuses, incentive pay, and commissions may continue to be counted toward the annual \$134,004 minimum as under the prior rule.
- The above minimums will be automatically updated every three years, with the first update announced Aug. 1, 2019 and effective Jan. 1, 2020. Effective Jan. 1, 2020, it is anticipated that the new salary minimum will be \$51,168 and the new highly compensated employee minimum will be \$147,524.

The Department of Labor published detailed guidance for the [non-profit sector](#), institutions of [higher education](#), and [state and local governments](#). Legislation has been introduced to [stop the new rule](#), although it remains to be seen whether the opposition will gain any traction.

To comply with the new rule, employers should take the following steps before Dec. 1, 2016:

- Review any positions with a salary close to the new proposed \$47,476 and \$134,004 minimum thresholds. Consider whether finances allow increasing salary to the new minimum threshold, keeping in mind that the minimum will increase again on Jan. 1, 2020.

- For any position no longer exempt from overtime due to the new rule, determine whether business needs require an average workweek in excess of 40 hours (or in excess of the overtime hours requirement under state law). If overtime is necessary, decide whether to (a) convert to hourly rate and absorb the costs of overtime, (b) restructure the position to reduce the need for overtime or (c) increase the salary to meet the new minimum. Seasonal fluctuations in hours also should be considered to the extent temporary or part-time hours may be used to reduce the need for overtime work. For any position where overtime hours are not necessary, plan to convert compensation to an hourly rate and limit overtime work as appropriate.
- Plan employee communication strategies. Employees converted to overtime eligible status often resist the typical time-tracking and work-hour constraints associated with overtime-eligible positions. Plan to

train converted employees and managers regarding procedures for seeking pre-approval of overtime, reporting all hours worked and limiting the need for overtime work.

- Review existing overtime policies regarding advance approval of overtime and reporting overtime hours worked. Remote electronic access policies may require revision or remote access may need to be limited for those employees no longer eligible for overtime, in order to minimize overtime work hours.

With a compliance deadline of Dec. 1, 2016, employers should take steps now to prepare for the changes in the overtime law. Appropriate management, human resources, finance and legal personnel should be consulted to minimize the financial impact to the company and the risk of future noncompliance. ■

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