



FLSA OVERTIME EXEMPTIONS FAQ SHEET

The Division of Human Resources has prepared this fact sheet to assist state agencies in implementation of the updated final rule on overtime pay and white collar exemptions, as announced earlier this year by President Obama. The changes go into effect on December 1, 2016. Future automatic updates to the salary thresholds will occur every three years, with the next increase to start January 1, 2020.

If there are further questions not addressed within this document, please do not hesitate to call DHR at 334-2263 or the HR consultant assigned to your agency.

Q: Can agencies increase pay rates to meet the salary test?

A: Agencies proposing to give employees pay increases to meet the salary test in the new rules should work with the assigned DFM analyst. Agencies proposing pay increases in the current fiscal year must have ongoing (not one-time) funds to cover the increase. Agencies must also ensure that a current performance evaluation is on file with a minimum APS (achieves) performance rating for each employee receiving increased pay, and the new rate of pay does not exceed the current pay range for the position.

Q: Does the FLSA and the overtime provisions apply to all state employees?

A: Most state employees are subject to the FLSA, however there are certain employees who do not fit the definition of “employee” under this federal law. [See end note]¹

The relevant section of the FLSA, 29 U.S.C. Section 203 (e) (1) - (2), reads as follows:

(1) “Except as provided in paragraphs (2), (3), and (4), the term ‘employee’ means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

- (i) as a civilian in the military departments (as defined in [section 102 of title 5](#)),
- (ii) in any executive agency (as defined in section 105 of such title),
- (iii) in any unit of the judicial branch of the Government which has positions in the competitive service,
- (iv) in a non-appropriated fund instrumentality under the jurisdiction of the Armed Forces,
- (v) in the Library of Congress, or
- (vi) the Government Publishing Office;

(B) any individual employed by the United States Postal Service or the Postal Regulatory Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, *other than such an individual—*

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency, (II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.” (emphasis added)

Q: What does each agency need to do to plan for the changes?

A: DHR has provided impacted state agencies with a report reflecting all potential impacted employees. This report covers all employees who make less than \$913 a week and are currently coded as FLSA exempt.

Q: Does FLSA exempt mean the same thing as being a “non-covered” employee?

A: Yes, the terms are used interchangeably and they indicate exemptions for administrative, executive and professional white collar workers. Also, the terms FLSA non-exempt and “covered” are used interchangeably when discussing application of overtime pay and applicable state law and processes.

Q: Will the state classifications be updated with new FLSA codes?

A: DHR will work with each agency to determine the number of incumbents in each classification being affected. Depending on both the duties and salary test, some classifications may change their FLSA code.

Q: Will there be more than one FLSA code per classification?

A: Job classification or job title alone have never determined exempt status under the FLSA. Likewise, an individual’s salary, alone, does not indicate that an employee is exempt from overtime and minimum wage protections. Designating one classification as exempt or nonexempt does not mean that all of the employees in that job classification are doing the same work. Remember, the revised FLSA standards are focused on two factors: salary, then analyze whether their particular job duties meet exempt criteria. [See Duties Test Table on p. 4]

Q: Does the \$913 per week apply to an annualized salary of \$47,476, or actual weekly earnings of an employee?

A: Under the new regulations, the standard salary test is administered at a weekly level of at least \$913, which is equivalent to \$47, 476 full-time. However, the test is specific to weekly earnings and not the annual salary.

Q: What is the threshold for part-time employees, and is it based on a full-time equivalent?

A: FLSA does not define nor make a distinction between part-time and full-time employment. Whether an employee is considered full-time or part-time does not change the application of overtime exemption designators.

Q: Is there a difference for part-time employees?

A: Whether a worker is full-time or part-time, the standard salary level to qualify for exemption will be \$913 per week.

Q: How are part-time professional employees handled?

A: Whether a worker is full-time or part-time, the standard salary level to qualify for exemption will be \$913 per week. Keep in mind the salary level and salary basis requirements do not apply to licensed or certified doctors, lawyers and teachers. Employees in these occupations who meet the duties tests are exempt regardless of their salary. For information on the Learned Professional Exemption, please see U.S. Department of Labor Fact Sheet 17d. It provides a concise overview of the applicable duties tests for the professional exemption and can be found at https://www.dol.gov/whd/overtime/fs17d_professional.pdf

Q: What happens to those with fluctuating workweek hours? If a workweek is occasionally under 40 hours, does this affect an exempt status?

A: No. The exemption from overtime is based on earning more than \$913 per week and passing the duties test, not based on hours worked during a week. FLSA requires that the employer must keep an accurate record of the number of daily hours worked by the employee. For those managing a flexible schedule, by the end of each pay period the employee can provide their employer with the total number of hours worked each week.

Q: What will happen to compensatory (“comp”) time balances if an employee changes from exempt to covered?¹

A: Agencies should direct impacted employees who currently have comp time balances to use their comp time prior to December 1, 2016. Comp time accrued prior to the December 1 effective date will not be lost but may be accrued at a different rate, i.e., newly nonexempt employees will accrue overtime at 1:1.5 for hours worked over 40 per workweek instead of 1:1. Idaho’s statutory requirements regarding the use of comp time have not changed.

Q: What will happen to vacation accrual if an employee changes from exempt to covered? ²

A: Please refer to the chart below which shows the differences that FLSA currently has on vacation accrual. Please note that there is no change for employees whose hours of credited state service (CSS) are over 31,200 hours, regardless of FLSA status as non-exempt, i.e., covered, or exempt, i.e., not-covered. This equates to approximately 15 years of full-time service.

¹ See I.C. Section 67-5328 and I.C. Section 59-1607, Hours of Work and Overtime, concerning classified and non-classified workers, respectively.

² See I.C. Section 67-5334 and I.C. Section 59-1606, Vacation time, concerning classified and non-classified workers, respectively.

VACATION LEAVE ACCRUAL DIFFERENCES

CSS hours	Leave Code - Exempt	Leave Code - Covered	Difference per pay period
0.0-10,400.0	AP 4.6 hours 0.05769 Max: 192	AA 3.7 hours 0.04615 Max:192	0.9 hours
10,400.1-20,800.0	BP 5.5 hours 0.06923 Max: 240	BA 4.6 hours 0.05769 Max: 240	0.9 hours
20,800.1-31,200.0	CP 6.5 hours 0.08077 Max: 288	CA 5.5 hours 0.06923 Max: 288	1.0 hours
31,200.1 and over	DP 6.5 hours 0.08077 Max: 336	DA 6.5 hours 0.08077 Max: 336	0.0 hours

Q: Does this new requirement come into effect for hours worked beginning December 1, 2016, or the first payday on or after December 1, 2016?

A: The existing regulation remains in effect until December 1, 2016. After that date, the new standard will take effect. December 1, 2016 falls within the end of a pay period for the State of Idaho. The effective date for the State of Idaho will be the beginning of the pay period on November 20, 2016 for the December 16, 2016 pay date. IPOPS actions must be in to DHR by December 2, 2016.

In order to change an employee’s FLSA code, an agency personnel originator will need to submit a 'Miscellaneous Update' action in IPOPS using the change reason 'MW-Miscellaneous Personnel'.

This action will allow the agency to change the FLSA code, corresponding leave code and overtime accrual indicator, if applicable. These actions will require the normal approvals.

Q: What if an employee has an American Disabilities Act (ADA) accommodation for reduced hours? Will they need to still be paid at least \$913 per week to keep them exempt?

A: If the employee does not receive at least \$913 per week, then the employer may want to change the employee status to nonexempt as part of his or her ADA accommodation, especially if his or her schedule is subject to fluctuation.

Q: With so much focus on the new salary test threshold, how important will the duties test be?

A: DOL did not make changes to the duties test under the new regulation. Its importance remains the same as establishing eligibility for exemption from the overtime regulations. The prior salary

threshold of \$455 per week was much lower and many employers focused mainly on the duties test.

DUTIES TEST UNDER NEW RULE

	EXECUTIVE	ADMINISTRATIVE	PROFESSIONAL
Salary Basis Test	•Employee must be paid on a salary basis	•Employee must be paid on a salary or fee basis	•Employee must be paid on a salary or fee basis
Standard Salary Level Test	•\$913 per week (\$47,476 per year for a full-year worker)	<ul style="list-style-type: none"> • \$913 per week (\$47,476 per year for a full-year worker) • Special salary level for certain academic administrative personnel 	<ul style="list-style-type: none"> • \$913 per week (\$47,476 per year for a full-year worker) • Salary level test does <u>not</u> apply to doctors, lawyers, or teachers
Standard Duties Test	<ul style="list-style-type: none"> •The employee’s “primary duty” must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise (and managing 2 full-time employees as well). •Additional requirements provided in 29 CFR 541 Subpart B 	<ul style="list-style-type: none"> •The employee’s “primary duty” must include the exercise of discretion and independent judgment with respect to matters of significance. •Additional requirements provided in 29 CFR 541 Subpart C 	<ul style="list-style-type: none"> •The employee’s “primary duty” must be to primarily perform work that either requires advanced knowledge in a field of science or learning or that requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. • Additional requirements provided in 29 CFR 541 Subpart D

Q: Do employees have to be paid at least the \$913 in a week even if the employee takes one day of unpaid leave out of a 5 day workweek?

A: To qualify for any of the white collar exemptions, employees generally must meet the salary basis test, the salary level test, and the duties test. Generally, if an exempt employee subject to the salary level test works for any amount of time during their workweek, they must receive at least the full standard salary level (\$913 per week, beginning on Dec. 1, 2016) to retain their exempt status. To be paid on a salary basis, an employee's pay cannot fluctuate according to the quality or quantity of their work. However, according to 29 CFR 541.602(b), employers may deduct from an employee's salary for full-day absences under certain circumstances. For example, if an employee is absent from work for one or more full days for personal reasons other than sickness or disability, the employer may make a deduction without changing the exempt status of the employee.

Q: What are the penalties for employers for non-compliance with the new overtime rules?

A: Under the FLSA, employers in violation of the law may be responsible for paying any back wages owed to their employees, as well as additional amounts in liquidated damages, civil money penalties, and/or attorney fees. See 29 U.S.C. 216.

¹End Notes:

1. Elected officials, i.e. Governor and Lt. Governor and all of Idaho's Constitutional officers, their personal staff members and officials in policy making positions who are selected or appointed by the elected public officials, and certain advisers to such officials, are excluded from FLSA coverage. These exclusions are covered in Title 29 of the Code of Federal Regulations (CFR), Part 553.
2. Personal staff members generally include only persons who are under the direct supervision of the selecting elected official and have regular contact with such official. It does not typically include individuals who are directly supervised by someone other than the elected official even though they may have been selected by the official.
3. In addition, in order to qualify as a personal staff member or official in a policymaking position, the individual must not be subject to the civil service laws of the employing agencies. In addition, such personal staff members must be appointed by, and serve solely at the pleasure or discretion of the elected official.
4. Appointed department directors and deputy directors are excluded from FLSA coverage.

Example Employee Communications Regarding FLSA Exemption Status Changes

Use this resource to help in the development of employee communications regarding changes to the Fair Labor Standards Act of 1938 (FLSA) exemption tests that were published on May 23, 2016 in the [Federal Register](#).

Template 1: To General Employee Population

Intent: Inform employees of the changes and provide contact information for questions.

Example Message: In May 2016, The Fair Labor Standards Act (FLSA), which governs federal minimum wage and overtime pay requirements, was amended. Those changes are effective December 1, 2016. If you are currently non-exempt (overtime eligible) and receive overtime at a rate of 1 ½ times your salary, and earn less than the new threshold of \$913 per week, these changes do not affect you. If you are exempt from overtime, you will be receiving a separate communication before the effective date, explaining in what way, if any, your position is being affected.

The Department of ___'s HR and management representatives are reviewing the regulations and auditing positions as necessary. We expect to have a final plan to address the overtime rule change effective November 20, 2016, to comply with the new regulations.

If your position is to be converted to overtime eligible (non-exempt) by the FLSA under the new rules, you will receive additional information. If have any questions regarding the new regulations, please contact your HR representative.

Template 2: To Affected Employees Receiving Pay Increases

RE: Changes to your Changes to Your Position's FLSA Code Necessary to Meet New Federal Ruling

Dear [Employee Name]:

You are currently exempt from being paid overtime at 1 ½ times your salary federal Fair Labor Standards Act (FLSA), due to both your job duties and the amount of salary you are paid. In May of 2016, the regulations under the FLSA were amended, significantly increasing the minimum salary requirement for exempt employees to \$913/week effective December 1, 2016. In reviewing our employees earning less than \$913/week, we have determined that the following action is necessary to ensure our Agency is in compliance with the Federal requirement.

Your salary will be increased to [\$ /hour] to meet the requirements of the revised regulations. Therefore, you will continue to be exempt from FLSA, meaning you will continue to earn straight-time comp time for any overtime hours worked. [There [will/will not] be changes to your job duties as a result of this

salary increase, which your supervisor will discuss with you.] There will not be any changes to your benefits.

Please contact [name and contact information] with any questions regarding the FLSA changes, your exempt/non-exempt status, or any other questions regarding the impact of this overtime rule on you and/or our Agency.

Template 3: To Affected Employees Changing to Non-Exempt (FLSA Covered)

RE: Changes to your Changes to Your Position's FLSA Code Necessary to Meet New Federal Ruling

Dear [Employee Name]:

You are currently exempt from being paid overtime at 1 ½ times your salary under the federal Fair Labor Standards Act (FLSA), due to both your job duties and the amount of salary you are paid. In May of 2016, the regulations under the FLSA were amended, significantly increasing the minimum salary requirement for exempt employees to \$913/week effective December 1, 2016. In reviewing our employees earning less than \$913/week, we have determined that the following action is necessary to ensure our Agency is in compliance with the Federal requirement.

Because your salary is below the \$913/week, your FLSA code is changing to non-exempt (overtime eligible) effective November 20, 2016. Beginning that date, you will be compensated for overtime at 1 ½ times your salary for any hours worked in excess of 40 hours per week. [There [will/will not] be changes to your job duties as a result of your non-exempt classification, which your supervisor will discuss with you].

Your vacation leave accrual code will be adjusted to coincide with the change to the FLSA code "C." Depending on your length of state service, this may reduce your vacation accrual rate. Please note this is an unintended consequence of our compliance with the new Federal ruling. Concerns about vacation accrual rates have been voiced to the Division of Human Resources (DHR), who is working on a solution to address this issue. Any resolution will require a Statute change and Legislative approval.

While your status under the FLSA is changing, it is important to note that your contributions to this organization are highly valued. This status change is not related to your job performance, it is only related to the change in federal law. The Department of ____ is committed to correctly identifying our employees in the appropriate FLSA classification that reflects the requirements of the FLSA.

Please contact [name and contact information] with any questions regarding the FLSA changes, your exempt/non-exempt status, or any other questions regarding the impact of this overtime rule on you.