



New Federal Overtime Regulations Effective December 1, 2016 **

Equal Rights Division

Labor Standards Bureau

[New federal regulations](#) released on May 17, 2016, make changes to the most common overtime exemptions under the Fair Labor Standards Act (FLSA). The law is effective December 1, 2016, and will significantly limit employers from classifying certain salaried employees as exempt "white collar" employees (executives, administrative employees, and professionals).

This fact sheet is meant to assist Wisconsin employers in understanding how the changes may affect them.

Current Federal Law

Currently under the FLSA, in order to be exempt from federal overtime requirements under the white collar exemptions, employees must:

1. be paid on a salary or fee basis;
2. be paid a salary at least \$455 per week; and
3. meet a "duties test" for exempt salaried executives, administrative employees, or professionals.

The law also contains a "highly compensated employees" test that allows employees who perform office or non-manual work and who are paid total compensation of at least \$100,000 to be exempt as long as they perform just one of the duties of an exempt executive, administrative employee, or professional.

For more detail, see the Department of Labor (DOL), Wage and Hour Division's [Fact Sheet #17A](#), which details the requirements.

The Basic Changes

The changes to the FLSA's rule ([29 C.F.R. part 541](#)) are as follows:

- The salary minimum needed to meet the exemption will increase to \$913 per week or \$47,476 per year.
- Up to 10% of the salary minimum may from nondiscretionary bonuses and incentive payments, including commissions (\$91.30 per week), as long as such payments are made at least quarterly.

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- The minimum annual compensation for exempt HCE employees will be increased to \$134,004.
- Establishes a mechanism whereby the annual salary minimums will be adjusted every three years, beginning in January 2020.

The salary minimum was set at the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (currently, the South). The HCE salary minimum was set at the 90th percentile of weekly earnings of full-time salaried workers nationwide.

The Duties Test

It is important to note that although the July 2015 proposal to modify the rule sought comment on potential changes to the duties test, no changes were adopted.

Wisconsin Requirements Affect the Analysis

More importantly, employers must keep in mind that Wisconsin has a more stringent exemption test in place. The federal law specifically authorizes states to have stricter requirements.

Wisconsin's duties tests contain percentage limits on non-exempt work (20% for most occupations; 40% in retail and service establishments) similar to the pre-2004 federal "long test" that – for most employers – make the federal duties test inapplicable.

Likewise, [Wisconsin's salary minimums](#) have not been updated for many years and are not applicable to employers subject to both federal and state law (\$700 per month for executives and administrative employees; \$750 per month for professionals).

Tip to Wisconsin Employers

Employers subject to both Wisconsin law and the FLSA must look to the state duties test and the federal salary minimum to comply with both.

Some employers, though, are not subject to Wisconsin's requirements and need to look to federal law only. This includes most employees of nonprofit organizations.

Moreover, Wisconsin law does not contain the HCE exemption, so its use is not available to Wisconsin employers subject to both laws.

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Public Employees

Things are also slightly different for employees of the state of Wisconsin and its political subdivisions.

Both sets of laws apply, however, when analyzing exemptions for these employees, employers must look solely to federal law since the [Wis. Admin. Code § DWD 274.08 \(2\)](#) provides that the state exemptions are not applicable to such employees.

Further Questions?

For further information, about the federal law, contact the US DOL, Wage and Hour Division. For information about how Wisconsin law might affect the analysis, contact the Equal Rights Division.

For additional information about federal law, contact:

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