

FAIR LABOR STANDARDS ACT

FINAL OVERTIME RULES

[The Department of Labor \(DOL\) has announced a final rule](#) substantially increasing the minimum salary requirement for exempt employees under the Fair Labor Standards Act (FLSA). That rule becomes effective December 1, 2016.

Background:

Almost all employers are required to pay most employees at least the federal minimum wage for each hour worked and overtime time pay (at a rate of 1 ½ times the hourly rate) for all hours worked in excess of 40 hours in a workweek. There are [exemptions](#) from overtime and minimum wage requirements for certain employees who work in administrative, professional, executive, highly compensated, outside sales, and computer professional jobs. Most employees are not considered "exempt" from the FLSA's minimum wage and overtime requirements and are classified as "non-exempt." Employers must pay "non-exempt" employees at least the minimum wage for each hour worked as well as 1 ½ times the hourly rate for all hours worked in excess of 40 in a workweek. Keep in mind that Washington State has a higher minimum wage than the federal minimum wage and does not have a Highly Compensated Employee category for exempt employees.

The Final Rule:

[New Salary Requirements](#)

The DOL has made the following increase to the minimum salary requirement for exempt employees:

	Current	Effective 12/01/2016
Weekly	\$455.00	\$913.00
Yearly	\$23,660.00	\$47,476

Beginning December 1, 2016, employees who meet the administrative, professional, executive, highly compensated, outside sales, and computer professional jobs exemptions must be paid a minimum weekly salary of \$913 in order to be exempt from the FLSA's minimum wage and overtime requirements. .

[Automatic Adjustments Every Three Years](#)

Using census and labor statistics data, the DOL will, every three years, adjust the minimum salary requirement for exempt employees to keep it at the 40th percentile of full-time salaried workers in the lowest-wage region (currently the South). The first adjustment is scheduled for January 1, 2020. The DOL will publish a notice of updated salary requirements at least 150 days before those changes take effect.

Compliance with the New Rule:

[Make sure your "exempt" employees are properly classified under the final rule.](#)

Beginning December 1, 2016, employees who receive less than \$913 per week are considered "non-exempt" and must be paid at least the minimum wage and overtime. Employees paid a salary of at least \$913 per week who perform job duties falling within one of these categories (administrative, executive, professional, etc.) may be classified as "exempt." If an exemption no longer applies (i.e. the employee no longer performs certain job duties, or earns less than \$913 per week), the employee should be promptly reclassified as "non-exempt" and paid overtime in accordance with federal and state law or their salaries increased to a minimum of \$913 per week to keep their exempt status. For employees who are properly classified as exempt, make

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sure their job description accurately reflects current responsibilities.

[Compare the costs of raising employees' salaries.](#)

Compare the costs of raising employees' salaries to meet the new exemption criteria to what it would cost to reclassify them as non-exempt and pay them overtime when they work more than 40 hours in a workweek. If an employee's salary is well below the new minimum and they rarely work overtime, it might make sense to reclassify them as non-exempt. Conversely, if an employee's salary is closer to the new minimum (\$47,476) and they frequently work overtime, you may consider raising their salary to maintain the exemption.

[Consider the impact on internal pay equity.](#)

Beyond the costs of raising exempt employees' salaries, consider the impact on internal pay equity. Internal pay equity means employees are paid fairly when compared to other employees within your conservation district. If you substantially increase some employees' pay, other employees may have questions about why their pay isn't increasing. Also remember that with automatic adjustments every three years, you need to review and adjust exempt employees' salaries at least every three years.

[Courses of Action](#)

1. Evaluate and Realign Employee Workload

Employers can limit the need for employees to work overtime by ensuring workloads are distributed to reduce overtime, that staffing levels are appropriate for the workload and that workers are managing their time well.

2. Raise Exempt Employees' Salaries

If you have exempt employees who are paid less than the new minimum, you can raise their salaries to the new requirement. If you elect this option, it is a best practice to review their job duties to ensure they continue to qualify for these [exemptions](#).

3. Reclassify Employees as Non-Exempt

If exempt employees don't meet the new salary requirement, you can reclassify them as non-exempt and pay them overtime whenever they work more than 40 hours in a workweek. If these employees rarely work more than 40 hours per week, simply convert their salary to an hourly wage (divide their weekly salary by 40 hours). However, if these employees regularly work more than 40 hours per week and you want to keep your compensation costs the same, then you would need to account for the overtime premium when you reclassify them as non-exempt.

4. Utilize Comp Time

State and local government employers – unlike private sector employers – can still provide comp time rather than cash overtime payments in appropriate circumstances. If using this option, please make sure policies contain a time period by which the comp time must be used, and how much can be accumulated.

5. Implement a Pre-Approval/Notification Procedure to Work Overtime Hours

Many conservation districts have limited budgets. One way to ensure payroll costs don't exceed the budget is to require written preapproval by an employee's supervisor to be able to work more than 40 hours in a week. [While a policy such as this doesn't impair the employee's right to be compensated for overtime worked, it does put district management and staff on notice that there are not unlimited financial resources available to pay for district work.](#)

Note: Conservation districts have the option of paying non-exempt employees on a salary basis as long as the employee is paid at least the minimum wage for all hours worked and overtime when he or she works over 40 hours in a workweek. If you pay non-exempt employees on a salary basis, you must ensure that all time worked is accounted for and that the employee is paid overtime when due. [Click here](#) to learn more.

[More Questions?](#)

[Click here](#) to find more answers and background information on this important issue and [here](#) to more read advice from the Department of Labor on how to meet the requirements of this rule.

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