



The Basics

The Department of Labor enacted new overtime rules as part of the Fair Labor Standards Act, effective December 1, 2016. These new rules increase the overtime eligibility threshold to \$913 per week (\$47,476 per year), up significantly from the previous threshold of \$23,660 per year.



Do I have to take employees to the new minimum salary of \$47,476 annually to classify them as salaried non-exempt?



No. Any employee can be classified as salaried non-exempt at any salary level.



Can I classify an employee as exempt simply because they make \$47,476 annually?



No; the FLSA exemption requires a two-part test. The employee must be paid the minimum salary requirement **AND** pass the test for *all* job duties to qualify for one of the FLSA exemptions.



Do I have to pay for meal and rest periods?



Any rest period of 20 minutes or less is considered time worked and must be paid. Any lunch period of less than 20 minutes or where an employee eats at their desk and continues working is considered time worked and must be paid. Any lunch break away from the employee's desk where they are completely relieved of their duties for more than 20 minutes is not considered time worked and does not need to be paid.



Can I allow employees to use compensatory time in lieu of paying overtime?



There is nothing in the law that allows for the use of compensatory time unless you are the government. What you can do is flex the hours of your employee within your established work week to not exceed 40 hours per week. You cannot, however, carry hours over 40 into the next week and allow the employee to take time off for the hours over 40. For FTEs earning less than the new threshold amount of \$47,476 per year, all hours worked over 40 in any given pay week **must be paid** overtime at the rate of 1-1/2 times their regular rate of pay for all hourly and salaried non-exempt employees.

IMPORTANT UPDATE:

On Tuesday, November 22, 2016, a U.S. District Judge suspended the December 1, 2016 implementation date of changes to overtime rules in the Fair Labor Standards Act. While many businesses may be breathing a sigh of relief because they were in danger of non-compliance, the judge's order may be merely a temporary reprieve. Contact us to learn more.





If an employee meets the minimum salary requirement and supervises two or more FTE's, do they automatically classify for the executive exemption?



An employee must meet **all** the job duties test under the executive exemption and meet the minimum salary requirement. If they do not qualify for the executive exemption, review the qualifications for the administrative exemption.



How can I determine who is a learned or creative professional?



The learned professional exemption is an employee who primarily performs work requiring advanced knowledge/education and which includes consistent exercise of discretion and independent judgement. The advanced knowledge must be in a field of science or learning acquired in a prolonged course of specialized intellectual instruction. Creative professionals perform work requiring invention, imagination, originality, and/or talent in a field of artistic endeavor. *Examples: attorney, physician, statistician, architect, biologist, pharmacist, engineer, teacher, author, editor, composer, musician, and artist.*



Can you better define the administrative exemption which is the most "grey" of the exemption tests?



The administrative exemption is for employees whose primary duty is performing office or nonmanual work directly related to the management or general business operations of the employer or the employers' customers. Typically, this exemption is used for key individual contributors. All job duty test criteria must be met for this exemption.

The work includes the exercise of discretion and independent judgement with respect to matters of significance. "Exercise of independent judgment" in the work is regularly and consistently applied and little time is devoted to activities not directly and closely related to exempt work. The exercise of discretion and independent judgment entails comparing and evaluating possible causes of action, and then making a decision after considering them. "Matters of significance" refers to the level of importance and or consequence of the work. An employee who might meet this exemption typically formulates, interprets, or implements management policies and practices; can deviate from established policies and procedures without prior approval; carries out major assignments in the operations of the business; and can commit the employer in matters that have significant financial impact to the business.



Can I still allow my non-exempt employees remote access after normal work hours to email and company systems?



Yes. However, non-exempt employees must record all time spent reading and responding to email or any work they do in the work week both inside and outside normal business hours.

More questions? Contact us today!