

**SURVIVAL GUIDE TO THE
NEW OVERTIME
REGULATIONS**

**WHAT THE NEW REGULATIONS MEAN AND
HOW TO MINIMIZE NEGATIVE BUSINESS IMPACT**

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Disclaimer: The information provided within this Ebook refers to the overtime regulations proposed in 2016, and does not reflect the [most recent changes](#). This Ebook does not include legal advice and is intended for general informational purposes only. No representations or warranties, express or implied, are made about the completeness, accuracy, reliability, suitability or availability with respect to the content or related graphics contained in this eBook. Any use of this information is at your own risk.

INTRODUCTION

“OVERTIME IS A CHALLENGING TOPIC FOR MANY BUSINESSES...”

Overtime is a challenging topic for many businesses that struggle to get maximum work out of employees while minimizing payroll and expenses. When mishandled, overtime pay can often be a culprit in throwing off a budget or creating litigious situations.

For those companies that dread the thought of dealing with employee exemption statuses or paying overtime, it's time to buckle in. Change is coming.

The U.S. Department of Labor recently passed a new overtime law to better align compensation with hours worked. In short, many salaried workers who are currently exempt from overtime pay may now be eligible. While a financial impact to many businesses is inevitable, the value to the American workforce is undeniable.

This eBook explains the challenges that exist today with overtime, why a change was needed, what the new regulations mean, how your business may be affected, and what options may be available to you to minimize the financial impact.



THE U.S. DEPARTMENT OF LABOR RECENTLY PASSED A NEW OVERTIME LAW TO BETTER ALIGN COMPENSATION WITH HOURS WORKED.

WHAT IS OVERTIME?

At the most basic level, overtime is defined as the amount of time worked outside the scope of normal working hours that requires additional compensation pay based on employee eligibility.

Because “normal working hours” could be open to interpretation, the United States set the standard definition about eighty years ago with the Fair Labor Standards Act of 1938. The FLSA established that a regular workweek is 40 hours (or eight hours a day, depending upon the state) and mandated the payment of one and one-half times the worker’s normal rate of pay (known as overtime pay) for any hours worked above that standard amount.

However, in order to be eligible for overtime, employees must be classified as “non-exempt”; employees who are not eligible for overtime are considered “exempt.”

“A COMMON MISCONCEPTION IS THAT JOB TITLE OR SALARY LEVEL ALONE CAN DETERMINE STATUS...”

A common misconception is that job title or salary-level alone can determine status, but in fact, three tests are applied to ascertain an employee’s standing. In order to be considered “exempt” and therefore not eligible for overtime pay, an employee must pass all three tests:



SALARY BASIS TEST

The employee must be paid on a salary basis that is not subject to reduction based on the quality or quantity of work.



SALARY LEVEL TEST

The employee must be paid above the threshold set yearly by the Department of Labor.



DUTIES TEST

The primary job duties must involve the kind of work associated with exempt executive, administrative, or professional employees.

Of note: the first two test requirements do not apply to teachers or “bona fide practitioners of law or medicine” (read: lawyers, doctors).

WHY IS OVERTIME DIFFICULT TO COMPLY WITH?

Managing overtime can be challenging for many organizations. Without the right structures in place to capture time and pay accurately (i.e. error-prone manual processes or older systems), as well as a clear understanding of how to apply the exemption status, employees may not be paid the correct amount for their hard work.

Even if tracking and payroll are done correctly, insights into the additional expense of overtime may not be exposed until it's too late to manage the associated costs. The [Bureau of Labor Statistics](#) points to overtime accrual as one of the largest contributing factors to increased labor costs.

In fact, so many businesses struggle to handle payroll and time properly that the leading cause of labor litigations is overtime violations. These wage and hour violations accounted for approximately [\\$3.6 billion in penalties](#) from January 2007 through March 2015.

“THE LEADING CAUSE OF LABOR LITIGATIONS IS OVERTIME VIOLATIONS.”

THREE MAIN REASONS EXPLAIN WHY OVERTIME VIOLATIONS OCCUR

1

COMPLEXITY

Overtime rules aren't simple and can be subjective, which makes consistent application difficult.

2

VARY BY LOCATION

Each city and state can have its own regulations, which makes management by location another variable to manage.

3

CHANGING WORKFORCE

The increase in mobile and on-demand workers, coupled with disruptive technologies that blend the lines between work and personal time, make it challenging to track hours with manual or older systems.

WHY IS THERE A CHANGE BEING PLANNED?

“TIMES HAVE REALLY CHANGED...”

While the original FLSA standards and tests worked well in 1938, times have changed while regulations have seen very few updates. A minimum salary threshold was added in 1975, but that salary number has only been updated once in the forty years since, and the 2004 increase did not account for the impact of inflation.

The result? Only 7% of full-time salaried workers are eligible for overtime pay today; that number was 62% when the threshold was introduced in 1975.

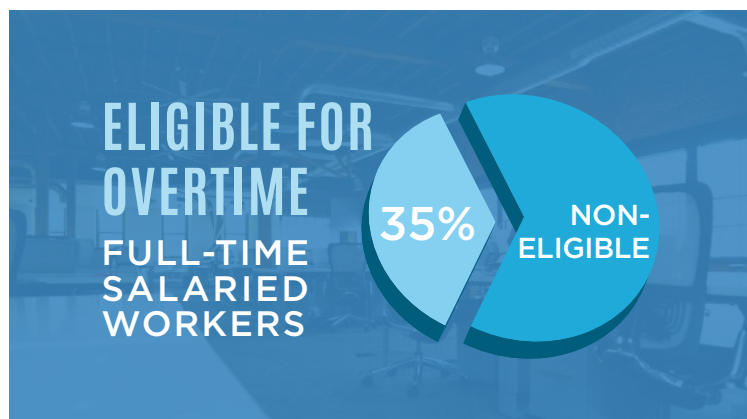
How times have changed, indeed.

While the exemption was originally designed to limit overtime pay for highly paid workers with better benefits, the erosion in the salary threshold has curtailed overtime pay to those who deserve it. To illustrate, a worker earning less than the poverty line for a family of four may earn too much to qualify for overtime with the \$455 per week threshold.

As a result of this mismatch between intention and reality—as well as the increase in litigation over the years related to exemption status abuse and misclassification—the Department of Labor passed the new overtime law on May 18, 2016.

DID YOU KNOW?

Based on their current pay scale, nearly 35 percent of full-time, salaried workers will be eligible for overtime? That's 4.2 million workers that will be newly eligible for overtime protections! This can be significant for time keeping and budgeting.



WHAT IS THE UPDATE?

Effective December 1, 2016, the Department of Labor’s Final Rule, updating overtime regulations, goes into effect and is expected to impact 4.2 million Americans within the first year of implementation. The purpose of the Final Rule is to protect and compensate large numbers of employees who deserve, but do not currently receive, overtime pay.

Here’s what you need to know about the key provisions and changes:

- ▶ **Threshold doubled:** The annual salary threshold for exempt employees is increasing from the current \$23,600 to \$47,476 (or from \$455 to \$913 per week).
- ▶ **HCE compensation level increased:** The total compensation level for highly compensated employees (HCE) who are full-time salaried workers is raised to \$134,004 annually. To be exempt as an HCE, an employee must also receive at least the new standard salary amount of \$913 per week on a salary or fee basis and pass a minimal duties test.
- ▶ **Automatic updates to salary threshold:** To maintain accurate standards, a mechanism is in place to automatically update the salary and compensation levels every three years, starting on January 1, 2020.

While these three items represent the big updates, two other notable points include:

- ▶ **Bonuses and Incentives:** The Salary Basis Test is amended to allow employers to use non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the standard salary level. Payments tied to productivity and profitability may be included.
- ▶ **Duties Test remains the same:** No changes have been made to the Duties Test, which determines whether employees must be classified as non-exempt.

For a summary of the Department of Labor guidelines, this chart is the authoritative source for determining an employee’s exemption status:

	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)	▶ \$913 per week (\$47,476 per year for a full-year worker) ▶ Special salary level for certain academic administrative personnel	▶ \$913 per week (\$47,476 per year for a full-year worker) ▶ Salary level test does not apply to doctors, lawyers, or teachers.
Standard Duties Test	▶ The employee’s “primary duty” must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise (and managing 2 fulltime employees as well). ▶ Additional requirements provided in 29 CFR 541 Subpart B	▶ The employee’s “primary duty” must include the exercise of discretion and independent judgement with respect to matters of significance. ▶ Additional requirements provided in 29 CFR 541 Subpart C	▶ 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

HOW DOES IT AFFECT YOUR BUSINESS?

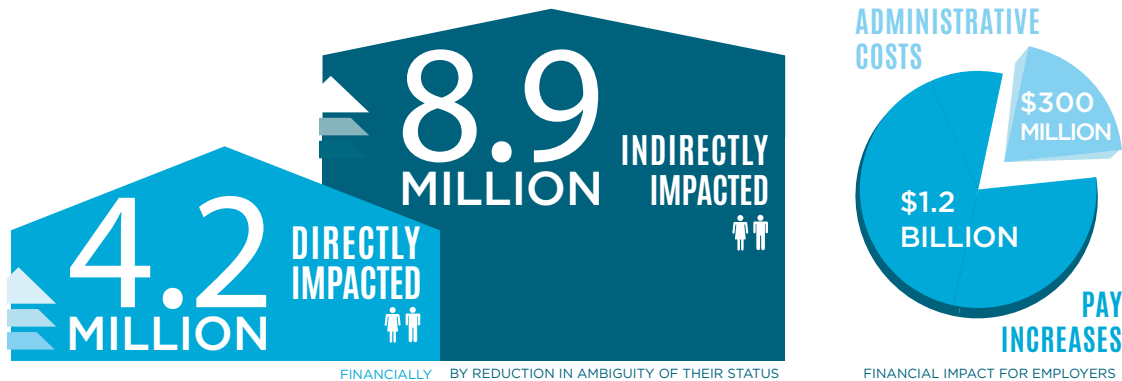
Every business will be impacted differently, depending on circumstances such as current employee exemption statuses, how many employees are now eligible for overtime payment under the updated rules, and where the business operates.

Financial Impact

The Department of Labor estimates the financial impact for employers will be \$1.5 billion annually, with the lion's share of that cost due to an increase in overtime pay to the tune of \$1.2 billion. The remaining \$300 million is attributed to the corresponding administrative costs.

Exemption Status

The change in employee exemption status is projected to impact 4.2 million workers directly. In addition, another 8.9 million will be indirectly affected with a reduction in the ambiguity of their status. The types of workers impacted include both salaried white collar workers (5.7 million) and salaried blue collar workers (3.2 million).



As explained by the Department of Labor, these workers are currently entitled to overtime but aren't receiving it. The new rules help these workers "have their overtime protection strengthened because their status as overtime-eligible will be clear based on the salary test alone without the need to examine their duties."

Location

The FLSA sets the minimum standards for all states. However, if your business is located in a state that has higher protective standards for employees than existed before (or after) the Final Rule, then the financial impact to your business may be lessened (although not necessarily the administrative headaches).

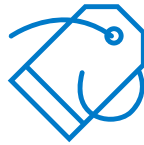
As an example, California employers will need to now keep track of federal and state thresholds because some provisions are stronger in each set of regulations. To elaborate, the Final Rule's new salary threshold is higher than California's threshold; however, the 51% duties test in California is stronger and more favorable to employees. As such, California employers are now beholden to both sets of standards.

WHAT ARE THE OPTIONS AND IMPACTS

As an employer, you have options for how to handle this update to the standard salary level. A logical first step is to arm yourself with knowledge about your workforce, including:



How many employees are now eligible for overtime pay?



What's their current salary versus the threshold?



How many hours do these employees currently work?

Only with this overview of the situation can you determine the best path forward and clearly see the financial impact to your business. At the simplest level, you can then balance the cost of adopting one (or several) of these tactics:



Raising salaries above the threshold



Paying overtime



Eliminating or reducing overtime hours

Of course, a combination of these approaches can be applied if you examine each affected employee (or employee type) and determine the best course of action by individual (or equivalent group).

For example, it may make sense to raise the salary of a worker who consistently puts in overtime so that this employee is above the threshold and exempt. Alternatively, for a nine-to-five employee who rarely puts in overtime, allowing that worker to be reclassified as non-exempt will have little impact on your financials since overtime will either never happen or cost less than raising his or her salary.

Of note, the Department of Labor points out: "Nothing in the rule requires employers to change employees' pay to hourly from salaried, even if the employees' classification changes from exempt to overtime eligible."

Scenarios, Impacts, and Suggested Actions

Every employee situation is unique, but the following scenarios provide some common challenges and suggested actions to minimize the impact on your business while satisfying the new regulations.

SAMPLE EMPLOYEE	HOURS	SALARY	IMPACT	ACTION
Office Manager (performs bona fide administrative duties)	Regularly works from 9am-5pm, Monday through Friday	Fixed salary of \$42,000/year	Because of the change in salary level, the manager is no longer an exempt employee.	None. The Final Rule has no impact because the manager does not work more than 40 hours in a given week. The office can continue to pay the manager a fixed salary of \$42,000 a year.
Operations Manager (at an international corporation whose job duties qualify for the administrative exemption)	Regularly works overtime to direct business operations in multiple time zones	\$45,000/year	Salary needs to be raised above \$47,476/year threshold to maintain administrative exemption.	Leave as exempt and increase pay. Because the salary is so close to the threshold, it makes more financial sense to raise the salary instead of reclassifying the status to non-exempt and paying overtime.
Manager (at an advertising agency)	Usually works normal hours with some occasional overtime	Fixed salary of \$41,600/year (\$800/week or \$20/hour)	Five hours of overtime every week (\$150 overtime compensation at a rate of \$30/hour) is less than increasing salary to the threshold.	Reclassify as non-exempt and pay overtime. Even if the manager works five extra hours every week, the additional \$7,800 is barely over the threshold. If the overtime is occasional, the employer only pays for the overtime received and likely saves money.
Manager (at a local hardware store who satisfies the duties test for the executive exemption)	Consistently works long hours. Currently begins work at 9am Monday through Friday and works until store closes at 7pm.	\$40,000/year	Now entitled to overtime compensation. Because he's working 260 extra hours a year, the financial impact of paying overtime is large. (However, it's also a loss of 260 hours of productivity in a year for the business.)	Reclassify as non-exempt and limit overtime. Reorganize workloads, adjust schedules (i.e. begin work at 10am to limit number of overtime hours), or spread work hours (additional hires).
Supervisor (at a private gym who satisfies the duties test for the executive exemption)	Regularly works 45 hours/week	\$37,000/year (or \$711.54 per week)	Minimum wage consideration, which means that wages cannot be adjusted every work week.	Adjust wages to reallocate salary between regular wages and overtime. Pay an hourly rate of \$15 and pay time and one-half for the 5 overtime hours worked each week.

HOW CAN YOU PLAN FOR THE CHANGE?

Here are five steps that will prepare you and your employees for the changes ahead.

1

STEP ONE: REVIEW CURRENT EMPLOYEE HOURS AND SALARIES

Paint yourself a clear picture of the employee situation today. You have time to get ahead of the changes and determine the right strategy. As such, know the following:

- ▶ Review the pay of workers who are on the cusp of the salary threshold
- ▶ Look at the number of hours that employees are working to determine if they can be reclassified as a non-exempt employee
- ▶ Carefully evaluate the cost of retaining employees “as exempt”

2

STEP TWO: UNDERSTAND THAT COSTS EXTEND BEYOND PAYROLL

While it may be tempting to make a sweeping change and bring all salaries above the threshold, remember that the threshold will increase every three years, and costs extend beyond payroll.

Analyze and run what-if scenarios before you roll out a plan. Changes to an employee's salary may impact benefits, which consequently means higher overall payroll costs. Conversely, never underestimate employee morale and the potential impact of being reclassified and losing employee benefits that are no longer mandatory.

3

STEP THREE: REEVALUATE YOUR EMPLOYEE HANDBOOK AND COMPANY POLICIES

Do you know how important company policy and employee handbooks are? From a legal perspective, those internal documents are next in line after federal, state, and local regulations. If a government law does not cover something, your business policies are the rule.

Most importantly, know what your policies are, how you're managing them, and how they are being carried out in practice. Consistent application of policy is key. And always consider remote employees, telecommuters, and your contingent workforce when formulating and applying company policies.

4

STEP FOUR: TRAIN YOUR WORKFORCE AND GET BUY-IN BEFORE CHANGES ARE ROLLED OUT

Employees will look to the business leaders to make clear the upcoming changes to overtime regulations and to explain how it impacts the employees and the business. Train all employees—executives, middle management, supervisors, HR, Payroll, workers—so that everyone is on the same page and buy-in comes from the top-down and the bottom-up. The best way to avoid litigious action is to educate.

5

STEP FIVE: START TRACKING YOUR EXEMPT EMPLOYEES AS WELL

The line between exempt and non-exempt employees keeps blurring, and misclassification of employees is a huge problem. Now is a great time to arm yourself with data so you can chart the right course. Visibility into attendance and productivity metrics across the organization will not only help your business but may also help you avoid future surprises. With the automatic threshold updates, it never hurts to have all the possible data on your workforce in order to stay ahead of future changes.

If capturing work time is a new activity for some or all of your employees, here are some helpful considerations to keep in mind as you implement new data collection:

- ▶ It is extremely important to train employees who need to track time to make sure it is done properly. Their pay/overtime and your legal cover depend on accurate time keeping.
- ▶ Now is a great time to correct misclassification issues and work hard to avoid future ones.
- ▶ Exempt employees can also have their time scheduled and tracked. In fact, Illinois requires time records.
- ▶ Tracking employee time helps with additional intelligence such as productivity, billing, and benchmarks to provide more helpful decision-making data in the future.

CONCLUSION

“THE END RESULT IS TO CREATE A HEALTHIER AND HAPPIER WORKFORCE”

The end result of the Final Rule is that middle class workers will be compensated for their time—either financially through overtime pay or by having more free time for their personal lives. While these updates to overtime may feel painful for some businesses, the new regulations are long overdue, and the end result will be a healthier and happier workforce.

***This Ebook was written in reference to the overtime regulations proposed in May 2016. For information on the update effective as of January 1st, 2020, see this [three-part series](#) detailing all of the latest [changes](#), [impacts](#), and [best practices](#).**

See how we helped one of our customers with wage and hour compliance:



CASE STUDY: REPLICON HELPS ROPE COURSES, INC. GET A GRIP ON TIME AND EXPENSES

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[Replicon, the Time Intelligence™](#) company, has over 20 years of industry leadership and is pioneering a new approach to time management. Time Intelligence elevates time as a strategic asset within an organization, to improve operational productivity, performance, and profitability.

Replicon's Time Intelligence Platform offers solutions for global time and gross pay compliance, enterprise time management for ERP, professional services automation, and an SDK for continued development - expanding the company's award-winning portfolio of cloud-based products, including complete solution sets for client billing, project costing, and time and attendance.

Replicon supports thousands of customers across 70 countries, with over 400 employees around the globe including the United States, Canada, India, Australia, and the United Kingdom.



REPLICON™



web. www.replicon.com
tele. (650) 286-9200
fax. (650) 508-9229