

Final Changes to the FLSA Overtime Rule

CAPLAW Webinar

May 28, 2024





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Agenda

- FLSA Overview
- Overtime/White Collar Exemptions
- Final Changes to Overtime Rule
- Considerations and Preparation
- Head Start Teachers
- FLSA Recordkeeping Requirements

Disclaimer

- This presentation only addresses the **federal Fair Labor Standards Act (FLSA)**
 - It does not address state law
- **State law** will govern where:
 - It is more protective of employees than the FLSA
 - The FLSA does not apply

Fair Labor Standards Act

Overview

- Must pay **minimum wage** & **overtime** for covered employees
 - Includes public and private sector employees
 - **Cannot** agree to waive OT pay
- **Unless exempt through “white collar” exemptions** (*29 C.F.R. Part 541*)
 - Cover certain **executive, administrative, professional (EAP)**, outside sales, and computer employees
 - Must meet 3 tests: salary basis, salary level, & duties
 - **May** treat an employee who meets 3 tests as **non-exempt**

Fair Labor Standards Act

Overview

- **“White collar” exemptions** (*29 C.F.R. Part 541*)
 - Cover certain **highly compensated employees (HCE)**
 - Must meet 3 tests: salary basis, salary level, duties (primary duty includes office/non-manual work, & more lenient duties test)

Current FLSA Rule

EAP Exemption Requirements (29 C.F.R. Part 541)			
	Executive	Administrative	Professional
1. Salary Basis Test	Regularly receives predetermined compensation amount	Regularly receives predetermined compensation amount	Regularly receives predetermined compensation amount*
2. Salary Level Test	\$684 per week (\$35,568 per year)	\$684 per week (\$35,568 per year)	\$684 per week* (\$35,568 per year)

*not applicable to lawyers, doctors, or certain teachers

Current FLSA Rule

EAP Exemption Requirements (29 C.F.R. Part 541)

	Executive	Administrative	Professional
3. Duties Test	(1) Managing org, dep't or subdivision; (2) customarily & regularly managing 2+ employees; and (3) have authority to, or significant input in, hiring, firing or promoting employees	(1) performing office work directly related to management or general business operations; and (2) exercising discretion & independent judgment as to significant matters	Work requires either: (1) advanced knowledge in science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (2) invention, imagination, originality, or talent in a recognized artistic field or creative endeavor

New Overtime Rule

Increases Standard Salary Level Test

CURRENT Overtime Rule	NEW Overtime Rule As of July 1, 2024	NEWER Overtime Rule As of January 1, 2025
<p>Employees paid on a salary basis who meet one of the duties tests must earn at least</p> <p>\$684/week (\$35,568/year)</p> <p>to be classified as exempt from the FLSA's minimum wage and overtime protections</p>	<p>Employees paid on a salary basis who meet the duties tests must earn at least</p> <p>\$844/week (\$43,888/year)</p> <p>to be exempt from the FLSA's minimum wage and overtime protections</p>	<p>Employees paid on a salary basis who meet the duties tests must earn at least</p> <p>\$1,128/week (\$58,656/year)</p> <p>to be exempt from the FLSA's minimum wage and overtime protections</p>

New Overtime Rule

Increases Highly Compensated Employee Compensation (HCE) Level

CURRENT Overtime Rule	NEW Overtime Rule As of July 1, 2024	NEWER Overtime Rule As of January 1, 2025
<p>HCEs who meet a minimal duties test must earn at least</p> <p>\$107,432/year (\$684/week)</p> <p>to be classified as exempt from the FLSA's minimum wage and overtime protections</p>	<p>HCEs who meet a minimal duties test must earn at least</p> <p>\$132,964/year (\$844/week)</p> <p>to be classified as exempt from the FLSA's minimum wage and overtime protections</p>	<p>HCEs who meet a minimal duties test must earn at least</p> <p>\$151,164/year (\$1,128/week)</p> <p>to be classified as exempt from the FLSA's minimum wage and overtime protections</p>

New Overtime Rule

Revised Salary Level Methodologies

- Effective as of **January 1, 2025**
- Standard Salary Level Methodology
 - **35th percentile** of weekly earnings of full-time non-hourly workers in lowest Census region
 - Currently at 20th percentile
- HCE Salary Level Methodology
 - **85th percentile** of full-time non-hourly workers nationally
 - Currently at 80th percentile

New Overtime Rule

Automatic Updates

- Includes **automatic updates** to standard salary level and HCE compensation
 - Every **3 years**
 - Based on “current” methodology at the time
 - No rulemaking process necessary

New Overtime Rule

Other Provisions and Information

- No change to **standard duties and salary basis tests**
- DOL info/guidance on the new rule:
 - <https://www.dol.gov/agencies/whd/overtime/rulemaking>
 - <https://www.dol.gov/agencies/whd/overtime/rulemaking/faqs>
- Available at 89 Federal Register 32842 (April 26, 2024)
- <https://www.federalregister.gov/d/2024-08038>

Recent History of Updates

- **2016** – Obama Administration
 - Published Final Rule that increased threshold from \$455/week to \$913/week and required automatic updates to it every 3 years
 - New methodology
 - Challenged in court, blocked, and struck down
- **2019** – Trump Administration
 - Published Final Rule that increased threshold from \$455/week to \$684/week; no automatic updates
 - No new methodology
 - Currently in effect

How to Prepare for New Rule

- **Rule effective July 1, 2024**
 - Additional changes phased in **January 1, 2025**
- DOL intends changes to be **severable**
 - DOL anticipating legal challenges
 - If court finds any provision invalid, others survive
- Assess your CAA's workforce
 - Exempt v non-exempt
 - How will increase in salary impact classification?

How to Prepare for New Rule

How to Prepare

- Track employee hours
 - Exempt employees
 - Monitor hours worked over period of time to approximate overtime hours
- Consult documentation
- Conduct a self-audit

Approaches to New Rule

- **Raise salaries** to maintain exempt status
 - Current salaries close to new salary level(s)
 - On July 1 - \$844/week
 - On January 1 - \$1,128/week
- **Reclassify employee** as hourly, non-exempt
 - Pay overtime for hours worked over 40/week
 - Current salaries not close to new levels
 - Do not regularly work overtime

Approaches to New Rule

- **Reclassify employee** as non-exempt, pay salary
 - Pay overtime for hours worked over 40/week
 - Different ways to structure salary arrangements
 - Consider how best to track time
 - Salary for set hours and regular overtime
 - Set hours over 40
 - Salary for fluctuating workweek

Approaches to New Rule

- **Adjust wages** to approximate same overall compensation
 - Reallocate earnings between hourly earnings (or base salary) and overtime to account for working over 40 hours per week
 - Regular rate must not be less than minimum wage
- **Restructure job duties**
 - So work can be completed within 40 hours each week

Head Start Teacher Classifications

May treat
Head Start
teachers
as

**EXEMPT
under teacher
exemption**

- Salary level test **not** apply.
- Head Start teachers **must** meet all exemption requirements, including Head Start program being an “educational establishment.”

**EXEMPT
under learned
professional
exemption**

- Salary level test **applies**.
- Must ensure each teacher’s credentials satisfy exemption requirements

NON-EXEMPT

May always chose this option.

Non-Exempt Employee

Scheduling Myths

- Non-exempt employees need to **punch a clock**
- Non-exempt employees must **sign in and out** each time he/she starts and stops work
- Non-exempt employees must have a **predetermined work schedule**
- Non-exempt employees may not **telecommute** or **work a flexible schedule**

FLSA Recordkeeping Requirements

- **Employers may use any timekeeping method**, as long as it is complete and accurate
- **Employees with relatively fixed schedules:**
 - CAA can keep a record of schedule (e.g., 8 hours per day) and merely note that the employee followed the schedule
 - Note any exceptions to schedule and report actual hours worked
- **Employees with flexible/varying schedules:**
 - Employee doesn't need to sign in/out or punch a clock
 - Employee should keep and record the total number of daily hours worked

FLSA Recordkeeping Requirements

- **Employers must maintain certain records for non-exempt employees:** (29 C.F.R. § 516.2)
 - Time and day of week when workweek begins
 - # of hours worked each day
 - Total hours worked each workweek
 - Basis on which employee's wages paid (e.g., "\$12/hour" or "\$640/week")
 - Regular hourly pay rate
 - Total daily or weekly straight-time earnings
 - Total OT earnings for workweek
 - All additions to or deductions from employee's wages
 - Total wages paid each pay period

Learn More...

CAPLAW FAQs

- *2024 Complying with the New FLSA Overtime Rule*
 - <https://caplaw.org/resources/2024-complying-with-the-new-flsa-overtime-rule>
- *2024 Overview of FLSA Principles*
 - <https://caplaw.org/resources/overview-of-flsa-principles-2>




**CAPLAW
FAQ**

A series of common legal questions and answers for the CAA network

Complying with the New Overtime Rule Under the FLSA

Updated May 2024

Beginning July 1, 2024, employees earning up to \$844 per week may become eligible to receive overtime pay for hours worked in excess of 40 per week. The U.S. Department of Labor ("DOL") issued a new rule (the "Overtime Rule") on April 26, 2024, that increases in two increments the salary level an employee must earn to be classified as exempt from the overtime requirements of the federal Fair Labor Standards Act ("FLSA"), from \$684 per week to \$844 per week on July 1, and then from \$844 per week to \$1,128 per week on January 1, 2025. The Overtime Rule also revises the methodology used to determine the salary level and establishes automatic updates to the salary level every 3 years. As a result of these changes, an estimated 1 million additional employees will become eligible for overtime compensation on July 1 and an additional 3 million workers will become eligible for overtime pay in



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Overview of FLSA Principles

Updated May 2024

This FAQ addresses commonly asked questions about the federal Fair Labor Standards Act (FLSA), including its applicability to Community Action Agencies (CAAs). It provides an overview of key FLSA principles and discusses the exemptions CAAs most frequently use to classify employees as "exempt" from minimum wage and overtime pay, including specific exemption issues for Head Start teachers.

A new Overtime Rule (the "Overtime Rule") issued by the U.S. Department of Labor ("DOL") will initially take effect on July 1, 2024, and is estimated to make an additional 1 million employees eligible for overtime compensation. Another 3 million are estimated to become eligible for overtime after the Overtime Rule's second salary level increase occurs on January 1, 2025. See CAPLAW's FAQ, [Complying with the New Overtime Rule Under the FLSA](#) for more information about the impact of the

Questions?



This training is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Grant Award Number 90ET0505-01.

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