



Complying with the New Overtime Rule Under the FLSA

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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 the subsequent January 2025 update.

CAPLAW developed the following FAQ to describe the new Overtime Rule and help Community Action Agencies (CAAs) prepare to implement changes. Note that state wage and hour laws may impose requirements that are more favorable to employees than the provisions of the FLSA. If state law establishes more protective standards than the FLSA, those higher standards apply in that state. Therefore, CAPLAW recommends that CAAs consult with an employment attorney licensed in their state to determine how best to comply with the new Overtime Rule and all applicable state and local rules.

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1. What is the new Overtime Rule and what is it trying to achieve?

The federal FLSA requires that employers pay employees at least minimum wage for all hours worked and overtime at no less than one and a half times their regular rate of pay for all hours worked over 40 in a workweek. However, employees who perform specific job duties are exempt from the FLSA’s minimum wage and overtime pay requirements.¹ The new Overtime Rule² raises the salary level that employees must earn to qualify for the most commonly used FLSA exemptions covering certain executive, administrative, and professional employees (the “EAP exemptions”).

Specifically, the new Overtime Rule:

1. Increases the salary level threshold for the EAP exemptions on July 1, 2024, from \$684 per week (\$35,568 per year) to \$844 per week (\$43,888 per year), and then on January 1, 2025, from \$844 per week (\$43,888 per year) to \$1,128 per week (\$58,656 per year);³
2. Increases the total annual compensation threshold for highly compensated employees (HCEs), who are subject to a more minimal duties test, from \$107,432 per year and at least \$684 per week to \$132,964 per year and at least \$844 per week on July 1, 2024, and to \$151,164 per year and at least \$1,128 per week on January 1, 2025;⁴
3. As of January 1, 2025, revises the methodology used to determine the EAP salary level to the 35th percentile of weekly earnings of full-time non-hourly workers in the lowest wage Census region, up from the current methodology set at the 20th percentile;
4. As of January 1, 2025, revises the methodology used to determine the HCE salary threshold to use annualized weekly earnings of the 85th percentile of full-time non-hourly workers nationally, up from the current methodology set at the 80th percentile; and
5. Establishes automatic updates to the EAP and HCE salary levels every 3 years using the new methodologies implemented on January 1, 2025.⁵

The new overtime rule makes no changes to the job duties tests for the EAP exemptions. For an overview of the EAP exemptions, see CAPLAW’s [Overview of FLSA Principles FAQ](#).

The following table summarizes the changes under the new Overtime Rule:

	Prior FLSA Regulations (Effective January 1, 2020 through June 30, 2024)	New FLSA Regulations (Effective July 1, 2024 through December 31, 2024)	New FLSA Regulations (Effective January 1, 2025)
Salary Level for EAP Exemptions	At least \$684 per week (\$35,568 per year)	At least \$844 per week (\$43,888 per year)	At least \$1,128 per week (\$58,656 per year)
HCE Total Annual Compensation Level	At least \$107,432 per year and at least \$684 per week	At least \$132,964 per year and at least \$844 per week	At least \$151,164 per year and at least \$1,128 per week
Future Adjustments to Minimum Salary Level	No automatic adjustments	Automatic adjustment every 3 years using the methodology currently in effect (from July 1, 2024)	No change

<p>Salary Level Methodology</p>	<p>20th percentile of weekly earnings of full-time non-hourly workers in the lowest wage Census region (EAP) 80th percentile of full-time non-hourly workers nationally (HCE)</p>	<p>20th percentile of weekly earnings of full-time non-hourly workers in the lowest wage Census region (EAP) 80th percentile of full-time non-hourly workers nationally (HCE)</p>	<p>35th percentile of weekly earnings of full-time non-hourly workers in the lowest wage Census region (EAP) 85th percentile of full-time non-hourly workers nationally (HCE)</p>
<p>Standard Duties Tests</p>	<p>See WHD Fact Sheet #17A for a description of the EAP exemption duties tests</p>	<p>No changes to the EAP exemption duties tests</p>	<p>No changes to the EAP exemption duties test</p>

2. When does the new Overtime Rule take effect?

The new Overtime Rule is **effective on July 1, 2024, with additional changes to be phased in on January 1, 2025**.⁶ CAAs should start planning for the changes now by analyzing which employees will be affected and determining the best options for compliance with the new rule (see Questions 6 and 7 for compliance options).

Recent history suggests that the Overtime Rule could face legal challenges that delay or ultimately block implementation. Partly in anticipation of these challenges, DOL intends for each of the changes in the Overtime Rule to be severable. This means that if a court finds any provision of the Overtime Rule invalid or unenforceable, all other provisions and sections remain effective and operative. For example, if a court stays or delays the January 1, 2025 salary threshold change based on challenges to the methodology underlying the increase, the initial July 1, 2024, salary threshold change should remain in effect.

3. Will the salary levels be updated on a regular basis?

Yes, the DOL intends to automatically update the standard EAP salary level and HCE total compensation threshold every 3 years using the then-current methodology. These automatic updates will not require additional federal rulemaking procedures.⁷

4. How many employees will be impacted by the new Overtime Rule?

As a result of the new Overtime Rule, an estimated 1 million more employees will become eligible for overtime pay on July 1, 2024, and a further 3 million will become eligible as a result of the increase to the standard salary level threshold to \$1,128 on January 1, 2025.⁸

5. What should CAAs do now to prepare for the new Overtime Rule?

The first increase under the new Overtime Rule goes into effect on July 1, 2024. While neither the DOL nor the FLSA recommends or dictates any particular method of compliance, an important first step for any CAA is to conduct a self-audit of its workforce to evaluate the impact of the new Overtime Rule. The CAA may then use that information to determine which

compliance option enables it to implement the new Overtime Rule most efficiently and cost-effectively.

As part of a self-audit, a CAA evaluates all exempt employees who currently earn between the current salary level (\$684 per week/\$35,568 per year), and the salary level as of July 1, 2024 (\$844 per week/\$43,888 per year). Keep in mind that on January 1, 2025, a CAA will need to engage in a similar evaluation of its exempt employees to determine who earns between \$844 per week/\$43,888 per year and \$1,128 per week/\$58,656 per year. Then, the CAA determines which of these employees work more than 40 hours per workweek and, if reclassified as non-exempt, would need to be paid overtime when the new rule goes into effect. Many CAAs already require employees to track their hours for grant allocation and reporting purposes, and this documentation will be useful when conducting the self-audit. If a CAA does not have a practice of requiring its exempt employees to record their hours for grant purposes, it should monitor the number of hours these employees work over a period of time to approximate the number of overtime hours an employee might be expected to work once the new Overtime Rule is in effect.

6. What are some of the options that CAAs have for complying with the new Overtime Rule?

CAAs have various options for complying with the new Overtime Rule, and may use methods described below that are supported by the FLSA regulations. The choice of which option to use is left to the discretion of the employer. In general, CAAs may:

Raise Salaries to Maintain Exempt Status

If an employee meets one of the EAP exemption duties tests, but is paid less than the new salary level and regularly over 40 hours a week, the CAA may choose to raise the salary of the employee to keep him or her as an exempt employee. This may be an option for employees whose current salaries are close to the new salary level. From an administrative and employee morale standpoint, CAAs may want to consider how selective raises for employees at or near the exemption threshold could affect other employees, especially those with similar job titles and/or job descriptions.

Reclassify Employee as Hourly, Non-Exempt and Pay Overtime for Hours Worked Over 40

A CAA could convert its currently exempt employees who will not earn at least the new salary level to hourly, non-exempt employees and pay for all hours worked by the employees, including time and a half for hours worked over 40 in a workweek. This may be an option for employees whose salaries are not close to the new salary level, who do not regularly work over 40 hours a week, or who do not work a consistent number of hours per week.

Reclassify Employee as Non-Exempt, Continue to Pay a Fixed Salary, and Pay Overtime Above the Salary

Because “salaried” status is often perceived as more prestigious and/or offering greater flexibility, converting employees who are accustomed to working as exempt employees to hourly employees may result in a loss of morale. The FLSA does not require employers to treat non-exempt employees as hourly employees, so long as the employees receive overtime pay for hours worked in excess of 40 in a workweek. Thus, a CAA can pay a fixed salary to a

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non-exempt employee, and pay overtime when the employee works more than 40 hours in a workweek. This means that a CAA must still track and record the actual number of hours worked by the non-exempt salaried employee. There are a few ways to structure this:

- **Option A - Salary for Set Hours:** The CAA can pay the employee a salary for the first 40 hours of work per week, and overtime at *time and a half* for any hours worked over 40. This option may work best for employees who typically work 40 hours per week and do not frequently work overtime, or those who do not consistently work the same amount of overtime each week.
- **Option B - Salary for Set Hours + Regular Overtime:** The CAA can pay the employee a set straight-time salary *covering more than 40 hours* in a week and *pay half-time* overtime for hours over 40 included in the salary, as well as *time and a half* overtime for all additional hours. CAAs electing to use this option should communicate to their employees that the straight-time salary covers up to a certain number of hours (exceeding 40). CAAs should think about this number carefully, as it should approximate the number of overtime hours the employee regularly works. For example, if an employee regularly works approximately 42 hours per week and occasionally works up to 45 hours per week, the CAA may want to tell the employee that the fixed salary covers up to 45 hours per week, even if the CAA does not expect the employee to work 45 hours every week. The CAA should indicate that the CAA will pay overtime for any hours the employee works over 40 (at the applicable overtime rates) and document this communication for each employee.
- **Option C - Salary for Fluctuating Workweek:** For employees whose hours vary from week-to-week, the CAA and employee can agree in advance on a fixed weekly salary that covers more than 40 hours, then pay *half-time* overtime for hours over 40 that are covered by that agreed-upon salary, and finally pay *time and a half* overtime for all additional hours worked. To use the fluctuating workweek method,⁹ the employee's work hours must fluctuate from week to week. The employee must also be paid a fixed salary; payment of other forms of compensation as part of or above the fixed salary (e.g., shift pay, incentive bonuses, holiday pay, etc.) will tend to show that an employee is not paid a fixed salary. There must be a clear agreement between the employer and employee that the fixed weekly salary is compensation for all hours worked each workweek (apart from any overtime premium), regardless of how many hours the employee actually works.¹⁰ In other words, a CAA must pay the employee the fixed salary amount even if he/she works less than the agreed-upon number of hours in a week (except for any permissible deductions made pursuant to the CAA's personnel policies).

For example, a juvenile court case worker at a CAA is responsible for accompanying clients to their court appearances. His hours fluctuate from week to week, depending on his schedule of court hearings for that week, but he typically works no more than 50 hours each week (and sometimes he works fewer than 40 hours). If the CAA uses the fluctuating workweek method, the CAA must enter into a clear agreement with him that his fixed salary of \$31,200 (\$600 per week) that represents total compensation (excluding overtime premium payments) for an expected workweek of 50 hours. This means that the CAA must pay the employee \$600 even if he works less than 50 hours in a workweek. If he works any hours over 40 in a workweek, the CAA pays him overtime at a half-time premium. The

employee's regular rate for each week depends on the number of hours he actually worked that week. Thus, if over two weeks he works 44 and 50 hours, his regular rate of pay would be \$13.64 and \$12, respectively. Since he received straight time compensation for all hours worked in those weeks, only additional half-time pay is due for overtime hours. For the first week, he is owed \$627.28 (fixed salary of \$600, and 4 hours of overtime pay at half time his regular rate of \$13.64 for a total overtime payment of \$27.28); for the second week \$660 (fixed salary of \$600, and 10 hours of overtime pay at half time his regular rate of \$12 for a total overtime payment of \$60).

Reclassifying an employee pursuant to Option A may be more cost-effective than raising salaries to maintain exempt status if an employee works limited overtime, or if the employee's current salary is significantly below the new salary level. A CAA benefits from Option B in that the employee's regular rate (on which the overtime premium is based) already accounts for the overtime hours included in the straight-time salary, typically resulting in a lower regular rate of pay than in Option A. Option B also enables an employee to retain the flexibility to work up to the number of overtime hours included in the straight-time salary (though the employer may not have the expectation that the employee work all of that time each week), without needing to ask for prior approval to work overtime each week.

The fluctuating workweek method in Option C, if applicable, benefits employers by establishing more stable and predictable labor costs, as this method allows them to spread labor costs that would otherwise vary from week to week over the course of the full year. Employees may also benefit under either Options A and B in that they receive a predictable paycheck each pay period, making it easier to budget for monthly costs that are relatively fixed (e.g., mortgage/rent payments or utilities bills).

Adjust Wages to Approximate Same Overall Compensation

If a CAA wants to maintain an employee's total compensation at approximately the same amount, it can reallocate an employee's earnings between hourly wages (or base salary) and overtime pay to account for working over 40 hours per week. An employee's regular rate of pay cannot, however, be less than the highest applicable minimum wage (federal, state, or local). The CAA must still record the number of hours an employee works each week and pay for overtime work based on the employee's regular rate. This option may have a negative impact on employee morale if it is viewed as paying a lower hourly rate to maintain compensation for someone who consistently works over 40 hours per week.

Restructure Job Duties

A CAA could redistribute or eliminate job duties to enable employees reclassified as non-exempt to complete their work within 40 hours each week. The CAA could then transfer these job duties to employees whose salaries are at or above the new salary level and will remain exempt, or hire additional employees to take on certain job functions. While this option provides CAAs with an opportunity to examine and update current job descriptions and responsibilities, it may also generate employee concerns about fairness if CAAs shift job duties from newly non-exempt employees to exempt employees.

7. Do CAAs need to classify all employees in the same position as exempt or non-exempt?

No. This is a common problem for CAAs that have employees with different lengths of service in the same position. Both employees may meet the job duties test and the salary basis test, but the more senior employee's salary may be at or above the new salary level, while the newer employee's salary may fall below the threshold. The CAA is not required to raise the salary of the newer employee. Though the CAA is allowed to classify one employee as exempt and the other non-exempt,¹¹ it should be mindful of the potential administrative burden and impact on employee morale of doing so.

8. What if all or part of a CAA's workforce is covered by a collective bargaining agreement?

Collective bargaining agreements are subject to the FLSA, and employees covered by such agreements are not exempt from the new Overtime Rule. Thus, if a CAA has a unionized workforce, it should check the collective bargaining agreement(s) currently in place and consult with a labor attorney before making any changes to a unionized employee's job description and compensation structure, including adjusting an employee's wages or regular rate of pay, converting a salaried employee to an hourly employee, shifting an employee's job duties, or restructuring an employee's job assignments. These issues will likely be subject to mandatory bargaining under the collective bargaining agreement.

For more information about compliance with the FLSA, the EAP exemptions, and HCEs, see CAPLAW's [Overview of FLSA Principles FAQ](#).

ENDNOTES

¹29 U.S.C. §§ 206, 207 and 213; 29 C.F.R. Part 541; Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA).

²Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, A Rule by the Wage and Hour Division, 89 FR 32842-32973, Apr. 26, 2024.

³89 FR 32842, 32971.

⁴89 FR 32842, 32972.

⁵89 FR 32842, 32971-73.

⁶89 FR 32842.

⁷89 FR 32842, 32973.

⁸89 FR 32842, 32843.

⁹DOL Fact Sheet # 82.

¹⁰29 C.F.R. § 778.114

¹¹DOL Opinion Letter FLSA2005-20.

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