

RCO law

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Overtime Rule Changes and How They Impact You July 1, 2015

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No Legal Advice Intended: This information is not intended, and should not be taken, as legal advice on any particular set of facts or circumstances about the topic. You should contact an attorney for advice on specific legal problems.

1. The Law

Fair Labor Standards Act of 1938 (“FLSA”)

-29 U.S. Code §§201-219

1. *Minimum wage*: Federal: \$7.25/hr.; Ohio: \$8.10/hr.
2. *Overtime pay eligibility.*
3. *Recordkeeping.*
4. *Child labor standards.*

2. Exemptions to the Law

-29 U.S. Code §213 Exemptions

Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide *executive*, *administrative*, *professional* and *outside sales* employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain *computer employees*. Collectively these exemptions are commonly referred to as the “*white-collar exemptions*”.

To qualify for exemption, employees generally must meet certain *tests* regarding their *job duties* and be paid on a salary basis at not less than **\$455 (the current standard)** per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job and salary must meet all the requirements of the Department of Labor's regulations.

3. The Regulations

- 29 CFR §§510-794

- 29 CFR §541.100 Executive Exemption
- 29 CFR §541.200 Administrative Exemption
- 29 CFR §541.300 Professional Exemption
 - .301 Learned Professionals
 - .302 Creative Professionals
 - .303 Teachers
 - .304 Practice of Law or Medicine
- 29 CFR §541.400 Computer Employees Exemption
- 29 CFR §541.500 Outside Sales Exemption
- 29 CFR §541.600 Salary Requirements

4. Why The Change?

- March 13, 2014 Presidential Memorandum to the Secretary of Labor
- March 13, 2014 DOL Fact Sheet Published
- May 5, 2015 Proposed Rule Changes Submitted to the Office of Management and Budget (OMB)
- July 1, 2015 Proposed Rules Made Public and Subject to a 60 day Public Comment Period

5. The Rulemaking Process

The “administrative agency” identifies a “need”

Here the “administrative agency” is the Department of Labor (DOL)

DOL submits a plan to the Office of Management and Budget (OMB)

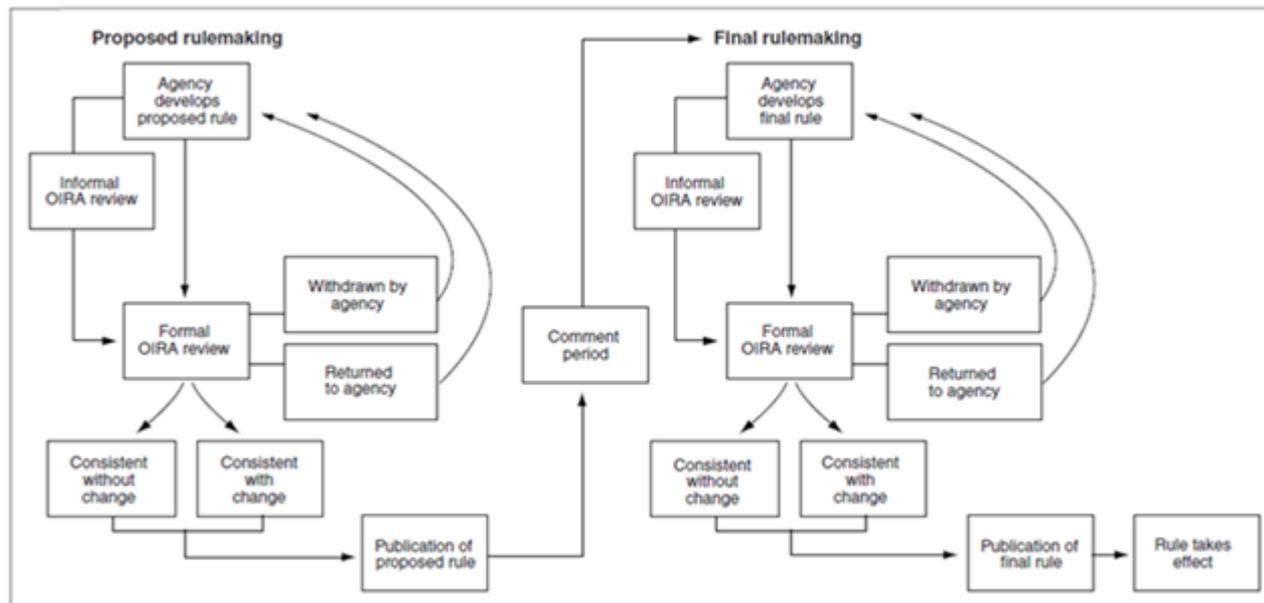
OMB assigns it to the Office of Information and Regulatory Affairs (OIRA)

OIRA has 90 (+30) days to review

The proposed rules released on July 1, 2015 are subject to a 60 day public comment period

5. The Rulemaking Process

Figure 4: The OIRA Regulatory Review Process



Source: GAO.

6. Basic White Collar Exemption Tests

1. The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”);
2. The amount of salary paid must meet a minimum specified amount (the “salary level test”); and
3. The employee’s job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the “duties test”).

7. Proposed Changes

A. Executive Employees (29 CFR §541.100)

	<u>OLD</u>	<u>NEW</u>
Weekly Salary Minimum	\$455	Not less than \$921*
Annual Salary Minimum	\$23,660	Not less than \$47,890*
Duties Test	<p>Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;</p> <p>Who customarily and regularly directs the work of two or more other employees; and</p> <p>Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.</p>	<p>Changes are still being considered by the DOL *</p> <p>*This is the best information we have to date. Please note, however, that this information is subject to change.</p>

7. Proposed Changes

B. Administrative Employees (29 CFR §541.200)

	<u>OLD</u>	<u>NEW</u>
Weekly Salary Minimum	\$455	Not less than \$921*
Annual Salary Minimum	\$23,660	Not less than \$47,890*
Duties Test	Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.	Changes are still being considered by the DOL * *This is the best information we have to date. Please note, however, that this information is subject to change.

7. Proposed Changes

C. Professional Employees (29 CFR §541.300)

	<u>OLD</u>	<u>NEW</u>
Weekly Salary Minimum	\$455	Not less than \$921*
Annual Salary Minimum	\$23,660	Not less than \$47,890*
Duties Test	<p>Whose primary duty is the performance of work requiring knowledge of an advanced type (defined as work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment) in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or</p> <p>Whose primary duty is the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.</p>	<p>Changes are still being considered by the DOL *</p> <p>*This is the best information we have to date. Please note, however, that this information is subject to change.</p>

7. Proposed Changes

D. Computer Employees (29 CFR §541.400)

	<u>OLD</u>	<u>NEW</u>
Weekly Salary Minimum	\$455	Not less than \$921*
Annual Salary Minimum	\$23,660	Not less than \$47,890*
Duties Test	<p>Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption, but only if the employee's primary duty consists of:</p> <ul style="list-style-type: none">(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or(4) A combination of the aforementioned duties, the performance of which requires the same level of skills.	<p>Changes are still being considered by the DOL *</p> <p>*This is the best information we have to date. Please note, however, that this information is subject to change.</p>

7. Proposed Changes

E. Outside Sales Employees (29 CFR §541.500)

	<u>OLD</u>	<u>NEW</u>
Weekly Salary Minimum	N/A	N/A
Annual Salary Minimum	N/A	N/A
Duties Test	Whose primary duty is making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.	<p>Changes are still being considered by the DOL *</p> <p>*This is the best information we have to date. Please note, however, that this information is subject to change.</p>

8. What to do now?

1. Identify Exempt Employees
2. Analyze Exempt Employees' Compensation
3. Analyze Exempt Employees' Job Duties



9. Exempt Employee Compensation

1. Identify all current exempt employees making less than **\$921/week** (those in the FLSA gray zone);
2. For all employees in the gray zone, identify:
 - i. their record of hours worked; and
 - ii. their current compensation package.
3. If the gray zone employees never, or rarely, work over 40 hours in a week, there is little to do other than reclassify the employee as non-exempt and pay the occasional overtime.
4. If the gray zone employee typically works over 40 hours per week, you could:
 - i. maintain the status quo, reclassify the employee as non-exempt and pay overtime;
 - ii. limit their hours to 40 per week so there is no “overtime issue”;
 - iii. Evaluate the cost/benefit ratio of bumping the employee’s pay up to the new minimum threshold to maintain their exempt status and avoid paying overtime

10. Exempt Employee Job Duties

1. Evaluate the current job duties of each exempt employee.
2. For employees whose current compensation and job duties meet the exempt standards in the revised rules, no change is required.
3. For employees whose current compensation and/or job duties ***do not*** meet the exempt standards of the revised rules, adjust job duties/compensation to meet the new requirements and maintain their exempt status, or make them nonexempt and pay overtime.

11. A Retail Analysis

National Retail Federation and Oxford Economics Study “Rethinking Overtime”

- Employers may try to reduce labor costs in response to the new rules by:
 - reducing hourly rates of pay to leave total pay unchanged
 - cutting bonuses and benefits to increase salaries above the new thresholds
 - reducing hours and hiring lower wage employees to fill the work gap
 - using part-time employees
 - automation

Questions?

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