

**The U.S. Department of Labor issued its final rule updating the overtime regulations on May 18, 2016. New regulations take effective on December 1, 2016.**

**Key Provisions:**

1. Sets the standard salary level current at \$913 per week; \$47,476 annual for a full-year worker;
2. Sets the total annual compensation requirement for highly compensated employees (HCE) at \$134,004;
3. Establishes a mechanism for automatically updating the salary and compensation levels every three years, beginning on January 1, 2020.

**What does this mean to Higher Education?**

- *Teachers:* Teachers are not subject to the salary level requirement for the white collar exemption. Teachers are exempt if their primary duty is teaching, tutoring, instructing, or lecturing. Teachers include professors, adjunct instructors, and teachers of skilled and semi-skilled trades and occupations.
- *Coaches:* Athletic coaches and assistant coaches may fall under the exemption if their primary duty is teaching, which may include instructing athletes in how to perform their sport. If, however, their duties primarily include recruiting athletes or doing manual labor, they are not considered teachers. A coach could primarily be responsible for instructing athletes but also spend some time recruiting or doing manual labor and still be considered ineligible for overtime.
- *Graduate and undergraduate students:* Generally, the Department views graduate and undergraduate students who are engaged in research under a faculty member's supervision in the course of obtaining a degree to be in an educational relationship and not an employment relationship with the school or with a grantor. As such, the Department will not assert such workers are entitled to overtime. Graduate students whose primary duty is teaching or serving as a teaching assistant fall under the FLSA's teaching exemption. Students who are participants in a bona fide educational program and who serve as resident advisors in exchange for reduced room and board charges or tuition credit similarly are not considered to be in an employment relationship with the institution.
- *Academic administrative personnel:* The administrative personnel that help run higher education institutions and interact with students outside the classroom, such as department heads, academic counselors and advisors, intervention specialists and others with similar responsibilities are subject to a special salary threshold that does not apply to white-collar employees outside of higher education. These employees are not entitled to overtime compensation if they are paid at least as much as the entrance salary for teachers at their institution. Public Higher Education Institutions May Utilize Provisions for State and Local Employees: Employees of public higher education institutions may also be public sector employees for whom specific provisions in the FLSA will further limit the impact of the final rule. Specifically, public institutions may be able to use compensatory ("comp") time as an option to satisfy their obligation to provide overtime compensation.

## **What are the Options?**

- *Raise Salaries:* For workers whose salaries are close to the new threshold and who meet the duties test, employers may choose to raise these workers' salaries to meet the new threshold and maintain their exempt status.
- *Evaluate and realign employee workload:* Employers can limit the need for employees to work overtime by ensuring that workloads are distributed to minimize overtime and that staffing levels are appropriate for the workload.
- *Pay overtime above a salary:* Employers also can continue to pay newly overtime-eligible employees a salary basis and pay overtime for hours in excess of 40 per week. The law does not require that newly overtime-eligible workers be paid on an hourly basis. This approach works for employees who usually work 40 hours or fewer, but have seasonal "spikes" or periods of activity when overtime hours are required, for which employers can plan and budget the extra pay during those periods.
- *Adjust employees' base pay and pay overtime:* Employers can adjust the amount of an employee's earnings to reallocate it between regular wages and overtime pay. This method works for employees who work a relatively small amount of predictable overtime. The revised pay may be on a salaried or hourly basis (there is no requirement to convert workers to hourly pay status), but it must include payment of overtime when the employee works more than 40 hours in a week.

## **Additional Resources:**

- Department of Labor specific guidance for higher education  
<https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf>
- NACUBO  
[http://www.nacubo.org/Business\\_and\\_Policy\\_Areas/Human\\_Resources/Human\\_Resources\\_News/More\\_Employees\\_Eligible\\_for\\_Overtime\\_Pay\\_Under\\_New\\_Federal\\_Rule.html](http://www.nacubo.org/Business_and_Policy_Areas/Human_Resources/Human_Resources_News/More_Employees_Eligible_for_Overtime_Pay_Under_New_Federal_Rule.html)
- Department of Labor <https://www.dol.gov/whd/overtime/final2016/>