

# Overtime Pay Eligibility Rules May Affect Your Exempt Employees



Effective **December 1, 2016**, executive, administrative, and professional employees making less than **\$47,476** per year are entitled to be paid overtime, including salaried employees. Before December 1, the “exempt from overtime” salary threshold is \$23,660.

## What Does This Mean For You?



**EXEMPT:**  
Salary is \$47,476 or more

Any employee who you wish to continue to classify as exempt must be paid a **minimum salary of \$47,476** by December 1, 2016 (these numbers are indexed to increase again in 2020 and every three years thereafter). Up to 10% of the minimum salary may be satisfied by non-discretionary bonuses, incentive pay or commissions, if made at least on a quarterly basis.



**NON-EXEMPT:**  
Salary is less than \$47,476 + overtime for >40 hrs

Any salaried employee who is not paid the minimum salary of \$47,476 will become overtime eligible (meaning that the employee will be entitled to receive overtime pay under federal law for **any hour worked** over 40 in a workweek).

AND

## Here is an Example to Illustrate the Point:

Jacob works at ABC Company as an historically exempt manager. He is paid \$30,000 per year and works, on average, 50 hours per week. As a result of the revised rule, on December 1, 2016, if Jacob must continue working 50 hours per week, ABC Company will need to either (i) increase his salary by \$17,476 or (ii) implement a way to keep track of Jacob’s hours worked and pay him overtime premiums for the 10 “overtime” hours he works each week.



**OPTION A:**  
Start Paying Overtime

If you keep the employee’s salary as is, reclassify the employee as non-exempt, and start tracking hours and paying overtime, the estimated annual overtime earnings are: **\$10,817.31**



**OPTION B:**  
Increase Employee Salary

To meet the new minimum salary of \$47,476 in order to maintain the employee’s exempt status, increase the employee’s salary by: **\$17,476.00**

OR

For the purpose of this example, annualized overtime earnings are calculated assuming the employee’s fixed salary compensated for a fixed 40-hour workweek, that overtime would be paid at a rate of 1.5 times the converted hourly rate, and the employee would earn 10 hours of overtime pay during 50 of 52 weeks in the year. Other assumptions, as well as other lawful methods of calculating overtime pay, would potentially reduce the employee’s annualized overtime earnings.

Note, this change in the law impacts employees exempted from the FLSA’s minimum wage and overtime requirements by the so-called “white collar” exemptions, not including the outside sales exemption.

# Factors for Assessing Applicability of the “White-Collar” Exemptions

## Executive Exemption: 3 duties factors

1. The employee’s key or most important job duty is the management of the business or a recognized department or subdivision.
2. The employee regularly directs the work of two or more full-time employees or their equivalents (i.e., 4 employees working 20 hours per week = 2 full-time employees).\*
3. The employee has the authority to hire or fire other employees or the employee is responsible for making suggestions and recommendations as to the hiring, firing, advancement, promotion, or other change in status of his/her direct reports, and those recommendations are always or almost always followed.

## Administrative Exemption: 2 duties factors

1. The employee’s key or most important job duty is directly related to the management or general business operations of the employer or the employer’s customers.
2. The employee makes decisions on matters that have a significant impact on the business or makes recommendations on such matters that are always or almost always followed.\*\*

## Learned Professional Exemption: 2 duties factors

1. The employee’s key or most important job duty is the performance of work that requires an advanced educational degree or licensure in a field of science or learning where the degree or licensing cannot be obtained without a prolonged course of specialized intellectual instruction.
2. The employee’s work is predominately intellectual in character and requires the consistent exercise of discretion and judgment (as opposed to routine mental, manual, mechanical, or physical work).

## Creative Professional Exemption: 2 duties factors

1. The employee’s key or most important duty is the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor (e.g., music, writing, acting, graphic arts).
2. The employee’s work is not routine mental, manual, mechanical, or physical work or work that can be produced by someone with general manual or intellectual ability and training.

## Computer Employee Exemption: 1 duties factor

1. The employee’s key or most important duty is :
  - (a) the application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional specifications; or
  - (b) 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; or
  - (c) the design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - (d) a combination of the above duties.

## Outside Sales Employee Exemption: 2 duties factors

1. The employee’s key or most important job duty is making sales or obtaining orders or contracts from clients or customers.
2. The employee is regularly away from the employer’s place(s) of business, meeting with clients and potential clients in person to make sales.

## Salary Basis Requirement

The employee generally must be paid on a salary basis. This means that the employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee’s work although an exempt employee need not be paid for any workweek in which he or she performs no work.

## Minimum Salary Requirement

Under the revised rule, the employee must be compensated at a rate of not less than \$913 per week (or \$47,476 annually). Highly compensated employees must earn at least \$134,004.

\*The hours that a subordinate is supervised may be counted only once for purposes of meeting factor 2. In other words, if one subordinate works 4 hours for one manager and 4 for another, 4 (not 8) hours may be counted towards the 2 FTEs requirement for each manager.

\*\*A non-exhaustive list of factor 2 includes formulating or implementing management policies or operating practices, carrying out major assignments with little or no oversight, performing work that affects business operations to a substantial degree, committing the company in matters that have significant financial impact, negotiating and binding the company on significant matters, providing consultation or expert advice to management, planning long- or short-term business objectives, investigating and resolving matters of significance on behalf of management, representing the company in handling complaints, arbitrating disputes, or resolving grievances.

\*\*\*The salary basis requirement does not apply to outside sales employees.

\*\*\*\*The final rule establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region and the highly compensated salary level at the 90th percentile of full-time salaried workers nationally.