

OFFICE OF THE GENERAL COUNSEL

Practice Group Advisory

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SUMMARY

The Department of Labor's Final Rule, effective December 1, 2016, will significantly increase the minimum salary level generally required for exemption from minimum wage and overtime obligations, raising it from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually).

If you have any questions regarding the effect of this Department of Labor Rule, or need assistance, please contact:

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This practice group advisory is issued by the Office of the General Counsel to provide updates regarding important legal and regulatory developments that affect the University. For additional information or assistance with a specific legal matter, please contact the Office of the General Counsel.

THE DEPARTMENT OF LABOR PUBLISHES ITS FINAL RULE ON OVERTIME

On May 18, 2016, the United States Department of Labor (DOL) published its final rule, which will significantly increase the number of individuals eligible for overtime pay under the Fair Labor Standards Act (FLSA), effective December 1, 2016. The rule updates the FLSA regulations governing overtime exemptions for executive, administrative and professional employees and increases the amount of salary an employee must receive to qualify for an exemption. The final rule will:

- Raise the salary threshold for exempt employees to \$913 per week (\$47,476 per year).
- Increase the minimum compensation required for an employee to qualify for the Highly Compensated Employee exemption to \$134,004 per year, up from \$100,000 per year.
- Update the salary thresholds every three years, with the first increase occurring on January 1, 2020.

The final rule does not make any changes to the duties test for executive, administrative and professional employees.

Background on the White Collar Exemption to Overtime Pay

Under the FLSA, an individual must satisfy three criteria to qualify as a "white collar" employee exempt from the FLSA's minimum and overtime pay requirements:

1. **The salary basis test:** The employee must earn a consistent weekly salary.
2. **The salary level test:** That salary must be at least the amount specified by the DOL, which currently is \$455 per week (\$23,660 per year) and will increase when the new regulations take effect.
3. **The primary duties test:** The employee's primary duties must be consistent with executive, professional or administrative positions, as defined by the DOL.

Notably, the salary basis and salary level tests do not apply to certain professionals, including professors, lecturers, tutors and other teachers, some academic administrative employees, doctors and attorneys. This means that these professionals may be exempt from overtime even if they do not meet the salary level test. However, other professionals, such as postdoctoral scholars and research employees, must meet both the salary basis test and the salary level test to be properly classified as exempt.

The Final Rule on Overtime

New Salary Level Test. The final rule increases the salary level required for the executive, administrative and professional exemptions from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). Employees who do not meet the new salary requirements when the final regulations become effective on December 1, 2016 will no longer qualify for one of these exemptions, which means they must be paid overtime compensation when they work more than 40 hours in one week.

Some Bonuses Considered for the Salary Level Test. Up to 10 percent of the salary level test can be met with non-discretionary bonuses, incentive pay, or commissions, so long as these payments are made on at least a quarterly basis.

Highly Compensated Employees. In its final rule, the DOL also increases the total annual compensation needed to exempt highly compensated employees from overtime requirements. Currently, to be exempt, a highly-compensated employee must perform an exempt duty and earn no less than \$100,000 per year. Under the new rule, the total compensation required for this exemption increases to \$134,004 per year.

Automatic Updates to the Salary Thresholds. The DOL's final rule provides for automatic updates to the salary thresholds every three years, beginning January 1, 2020. Each update will raise the threshold for the salary level test to the 40th percentile of full-time salaried workers in the lowest-wage Census

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region, which is estimated to be \$51,168 per year in 2020. The Highly Compensated Employee threshold will increase to the 90th percentile of full-time salaried workers nationally, estimated to be \$147,524 per year in 2020. The DOL will post the new salary thresholds 150 days in advance of their effective date, beginning August 1, 2019.

For more information on the DOL's final overtime rule, visit www.dol.gov/overtime. The DOL has also published a comprehensive overview of the FLSA and its impact on higher education [here](#).

Impact of the Final Rule on the University

Significant Impact on Many Exempt University Employees. At UC, the new salary level test will have the greatest effect on certain academic appointees without teaching or advising responsibilities, including postdoctoral scholars, researchers and specialists. The doubling of the salary test means employee compensation costs will increase for those employees who currently are exempt but would not be under the new regulations. Salaries either must increase to maintain the exemption, or employees will begin earning overtime compensation. Many of these academic appointees are supported on grant funding. The Director of the U.S. National Institutes of Health announced in a [Huffington Post article](#) that the NIH will increase the awards for postdoctoral NRSA recipients to meet the new salary level test and thereby maintain their exempt status.

The new salary level may also affect some managers and executives, athletic coaches, rehired retirees and other employees who hold part time appointments and, for that reason, may earn a salary that falls below the increased salary level.

Professors, Doctors, Medical Residents and Others Not Subject to the Salary Level Test. Some exempt University employees will be unaffected by this rule no matter how much they earn because the salary level test does not apply to them under current FLSA regulations. University employees that fall into this category include:

- professors, adjunct instructors, lecturers, tutors, and other bona fide teachers
- athletic coaches and assistant coaches, if their primary duty is teaching and instructing athletes
- undergraduate and graduate students engaged in research or extracurricular activities
- certain academic administrative personnel with the primary responsibility of advising and interacting with students
- doctors, dentists, medical residents and veterinarians
- attorneys

Next Steps

As a result of the new overtime rule, University employees who perform exempt duties but earn less than the new salary level will need to either receive salary increases to bring them to the new salary level or be reclassified as non-exempt employees eligible for overtime. Academic Personnel, Human Resources and the Office of the General Counsel are already working together to provide assistance and further guidance on issues of implementation and compliance so that the University will be ready when the final rule takes effect on December 1, 2016.