

# Overtime rules

## What businesses should know about the federal wage and hour changes

The amendment to the Fair Labor Standards Act (FLSA) proposed by the Trump administration will likely impact more than 1 million American workers who are set to become eligible for overtime pay. As a result, some employers will be faced with a choice: Increase employees' salaries beyond the new salary threshold to potentially avoid overtime pay, or pay more in overtime. As employers consider this question, they will still have to navigate the duties test for each of the white-collar exemptions so as to not misclassify employees as they try to avoid the obligation to pay overtime. The Department of Labor's duties test determines if any employee's specific job duties meet all of the department's regulations for exempt employees.

*Smart Business* spoke with Christopher J. Carney, partner and chair of the Labor & Employment Practice Group, and partner-in-charge of the Cleveland office of Brouse McDowell, about the rule changes and what businesses need to know to stay in compliance.

### What are the more significant changes to the government's new overtime rules?

In order to be exempt from overtime, an employee must meet both a minimum salary threshold and a duties test. The Trump administration's Department of Labor has proposed increasing the salary level threshold for the white-collar exemptions — i.e., administrative, executive and professional employees — from the current annual level of \$23,660 to \$35,308 (or \$679 per week). The proposed rule also seeks to increase the total annual compensation amount for employees who are deemed to be highly compensated from \$100,000 to \$147,414 per year.

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Consequently, employees who may not meet the duties test for any of the white-collar exemptions would still be exempt from overtime if their salary meets or exceeds the \$147,414 threshold.

Just as significant as the proposed salary increase is what is not in the proposed amendment. The proposed amendment does not alter the highly fact-specific duties test for each white-collar exemption. In addition, the proposed amendment does not have an automatic adjustment to the salary threshold and it does not create different salary levels based upon the region of the country where an employee lives. The automatic adjustment and different regional salary levels were both part of the Obama administration's attempt to rewrite the salary-level threshold in 2016.

If enacted — the new salary threshold would go into effect on Jan. 1, 2020 — the proposed rule will significantly increase the number of employees eligible for overtime.

### How do the new federal overtime rules reconcile with existing Ohio overtime laws?

The proposed amendment to the Fair Labor Standards Act (FLSA) really does not have any effect on Ohio's wage laws, as the Ohio law follows the federal law. There is one exception: the 2019 Ohio minimum wage of \$8.55 per hour is higher than the federal minimum wage of \$7.25 per hour.

### What do employers need to do in order to be in compliance with the new rules?

Basically, employers need to decide whether to increase an exempt employee's salary to the \$35,308 threshold or convert them to nonexempt status and pay them overtime if they work more than 40 hours in a particular workweek.

### Where might employers face legal heat because of the new overtime rules?

Employers will not face new legal heat because the salary threshold is increasing. That is straightforward. The complicated issue for employers is determining whether the employees' duties actually meet the duties test for exempt status. The natural inclination for employers is to shoehorn as many employees into one of the white-collar exemptions as possible. However, the duties test for each of the white-collar exemptions is narrowly construed against employers, and that is where employers get into trouble.

### What should businesses understand about the overtime rule changes?

Meeting the salary threshold does not automatically make an employee exempt from the overtime requirements of the FLSA. The proposed amendments do not address the duties test for determining who is and who isn't exempt. ●