



PARTNERSHIP TO PROTECT **WORKPLACE OPPORTUNITY**

7 Things to Know about the NEW Overtime Regulations

The Department of Labor (DOL) issued its **final rule** making changes to Part 541 governing overtime exemptions under the Fair Labor Standards Act (FLSA) on May 18, 2016. The rule was published in the *Federal Register* on May 23, 2016.

The Partnership's members are disappointed that the final rule includes a significant increase to the salary threshold and automatic increases in the future. These will present considerable challenges to employees and employers. This is why PPWO-supported legislation to block the rule, pending a full economic analysis of the changes to overtime regulations, is still needed. This legislation also contains critical provisions preventing the rule from including automatic updates to the salary threshold.

Here are the key elements of the new regulation that you need to know now:

1. Salary Threshold Changed to \$913/week (\$47,476 per Year)

This threshold doubles the current salary threshold level. While this level is slightly lower than the threshold in the proposed rule, it still encompasses many employees that are currently classified as exempt. PPWO was disappointed that DOL did not offer a more reasonable increase pegged to, as it was in the past, a level designed to identify those employees that are clearly not engaged in exempt-type work, rather than deliberately expanding the number of employees eligible for overtime.

2. Automatic Salary Threshold Increases Every 3 Years (Not Annually) to Maintain Level at 40th Percentile in Lowest-Wage Census Region

DOL reduced the frequency of the automatic increases in response to concerns raised by PPWO and many others. Instead of annual increases, the threshold will be adjusted every 3 years to maintain the level at the 40th percentile of full-time salaried workers in the lowest-wage Census region. Automatically updating the salary threshold, however, does not allow the government to take into account changing economic conditions, specific impact on certain industries, or regional differences. It also denies the public the ability to have input on the threshold as required by the regulatory process.

3. Duties Test is Unchanged

The absence of a duties test change is a significant win for the thousands of stakeholders who expressed concern in this area. DOL made no changes to the standard duties test.

4. Effective Date is December 1, 2016

We advocated for a longer implementation period than the 60 days suggested in the proposal, and the final rule provides a period of almost 200 days, going into effect on December 1, 2016. Employers in conjunction with their HR professionals should review their current workforce immediately to

determine which employees are affected, whether to re-classify those employees or increase salaries to maintain exempt status, and devise a communications strategy. Employers will also want to keep in mind the periodic adjustments and set a regular review process.

5. Highly Compensated Employee (HCE) Exemption Is Now \$134,004 Per Year

The final rule increases the salary threshold for HCEs to \$134,004, instead of the proposed \$122,148. The new regulation retains the methodology in the proposed rule setting the threshold at the 90th percentile of full-time salaried workers nationally. This threshold will also be updated every three years.

6. Up to 10% of the Salary Can Come From Bonuses or Commissions

The Department floated allowing a 10% credit for bonuses or commissions and this is what they included in the final regulation. For employers to credit nondiscretionary bonuses and incentive payments toward a portion of the standard salary level test, however, such payments must be paid on a quarterly or more frequent basis and the employer is “permitted” to make a “catch-up” payment. More specific details of this new development are still unclear.

7. Advocacy in Congress is Even More Important Now

Now that we know what’s in the final regulation, the need for Congress to act is clear. Congress must pass the Protecting Workplace Advancement and Opportunity Act (S. 2707 and H.R. 4773), which would nullify this rule and require DOL to perform an economic analysis of how changes to overtime regulations will impact nonprofits, small businesses, and employers in other vulnerable industry sectors before issuing a new rule. The bill would also prohibit any future proposal from including any automatic update mechanism. Visit [PPWO's Action Center](#) to quickly and easily send an email to your members of Congress to ask that they cosponsor this important workplace legislation.

NEXT STEPS: Given the breadth of the rule, and the extremely broad array of employers affected and its impact on the economy, PPWO is considering all policy options.