

NEW DOL OVERTIME RULE RAISES EXEMPT SALARY THRESHOLD TO \$684/WEEK

The United States Department of Labor recently announced its new overtime rule for non-exempt (i.e., hourly) employees. The key takeaway from the highly anticipated announcement was the new salary threshold of **\$684 per week (\$35,568 per year)** that employees must earn to potentially qualify as “exempt” from overtime requirements. Other changes include raising the total compensation requirement for “highly compensated employees” from \$100,000 per year to \$107,432 per year. Employers will now have the ability to use non-discretionary bonuses and incentive payments (e.g., commissions) on an annual basis to satisfy up to 10% of the salary threshold, a move spurred by employers’ evolving pay practices. The new rule is set to go into effect on **January 1, 2020**.

The Fair Labor Standards Act generally requires employers to pay non-exempt employees premium pay (1½ times the regular rate) for hours worked over 40 in a week. An employer can designate an employee as exempt, however, if the following three conditions are met:

1. **Salary Test:** Currently, an employee must make at least \$455 per week (\$23,600 per year) to qualify as exempt. On January 1, 2020, an employee must make at least \$684 per week (\$35,568 per year). Any employees who make below the salary threshold cannot qualify as exempt.
2. **Salary Basis Test:** Exempt employees must also be paid on a salary basis, which means their pay must be pre-determined and not fluctuate based on the quality or quantity of work for that pay period.
3. **Duties Test:** Last, the employee’s primary duty must involve exempt work. The three most common examples are executive, administrative, or professional duties, though there are others.

This will be the first increase in the salary threshold since 2004. Many employees likely remember the last attempt to raise the threshold, when the DOL’s proposed rule set the number at \$913 per week (\$47,476 per year). A judge struck down the rule before it went into effect, and a change in administration meant there was no attempt to revive it. Though it is possible a similar challenge will be made here, it is less likely this rule will be set aside. Experts expect it will make an additional 1.3 million employees eligible for overtime throughout the country.

Employers should identify exempt, salaried employees who are currently earning below the increased threshold, as well as the duties those employees perform, to determine whether they will retain their exempt status after January 1, 2020, or whether adjustments should be

considered to retain exempt status. If you have questions about the rule or need assistance with wage-and-hour requirements, please contact the HR Manager of the Great Plain Conference at 785-414-4212.