



New Final Overtime Rule: FAQs for Employers

Note: A district court in Texas issued a ruling June 28 that prevents the Department of Labor (DOL) from enforcing the new Final Overtime Rule against the state of Texas as an employer.

Who is covered by the FLSA?

Generally, employees are covered by the Fair Labor Standards Act (FLSA) if the enterprise they work for:

- Has an annual gross income of \$500,000 or more
- Is a hospital, provides medical or nursing care to residents, is a school, or a public agency

Employees engaged in interstate commerce might be entitled to protections under the FLSA even if their employer is not covered by the FLSA.

Are there exceptions to the Final OT Rule?

1. What should employers know about seasonal/temporary employees?

Generally speaking, seasonal and temporary employees are covered by the FLSA's overtime and minimum wage protections. Employers of such employees impacted by the new Final OT Rule should ensure they are classified appropriately under the FLSA (e.g., increase pay for impacted exempt employees to meet the new weekly salary threshold(s) or reclassify employees as exempt).

2. Does the new Final OT Rule apply to employees of nonprofit entities (e.g., religious organizations)?

It depends. Many nonprofit organizations are covered by the FLSA and, if they are, their employees are entitled to same protections under the law and might only be exempt if they satisfy the FLSA's salary level, salary basis, and duties test including the higher salary levels established under the new Final Rule.

3. *If an owner is also an employee paid on a salaried basis, are they required to meet the minimum salary threshold to comply with the Final OT Rule?*

If their business is covered under the FLSA, in order to be classified as an exempt employee, they need to meet FLSA's salary level, salary basis, and duties test including the higher levels established under the new Final OT Rule.

4. *Can employers use bonuses to satisfy the standard salary level under the Final OT Rule?*

Nondiscretionary bonuses and incentive payments (e.g., commissions) can continue to be used to satisfy up to 10% of the standard salary test requirement, but only if payments are paid on an annual or more frequent basis.

How does this impact time tracking?

1. *If a nonexempt employee earns more than the weekly salary threshold during the workweek, are they still eligible for overtime pay?*

Yes. Regardless of their rate of pay, a nonexempt employee must be paid overtime in accordance with federal and state law unless the employee otherwise satisfies the requirements to be exempt (e.g., paid on a salary/fee basis test, at an amount that meets required salary threshold, and whose primary job duties satisfy one or more of the exemption standards.)

2. *Does PTO count toward hours worked when calculating overtime?*

Under the FLSA, PTO is not considered hours worked and does not count toward whether an employee has worked overtime in a workweek. The FLSA also typically does not require that PTO be included when determining an employee's regular rate of pay for overtime pay purposes. However, it will be important to set a policy and be consistent in implementation. Also, consult state and local laws that may be more protective.

3. *Is overtime based on the number of hours worked per day or per week?*

Under the FLSA, covered nonexempt employees must receive overtime pay for working more than 40 hours in a workweek. However, there are federal and state-specific laws that might be applicable and must be taken into consideration.

4. *Can an employee be offered compensatory time off (comp time) instead of being paid overtime at time and a half for hours worked over 40 in a workweek?*

Generally speaking, no. The use of comp time instead of overtime is limited to state or local government agencies. Private employers subject to the FLSA must pay nonexempt employees for all hours worked, even if unauthorized, including overtime at a rate of one and one-half times the employee's regular rate of pay for hours worked over 40 in a workweek.

5. *What if employees are paid on a bi-weekly or semi-monthly basis?*

Regardless of pay frequency, a nonexempt employee must be paid time and a half for hours worked over 40 hours in a workweek. State or local laws might be more protective. A workweek is defined as a fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods. It need not coincide with the calendar week, but might begin on any day and at any hour of the day.

What should employers consider?

1. *If an employer suspects that their employees are misclassified, what are some steps they can take to mitigate risk and improve their compliance with the FLSA and any state or local laws?*

Employers will want to conduct a detailed analysis to confirm an employee’s job classification by using the job duties test, salary level test, and the salary basis requirement test to understand if the employee qualifies for an exemption.

2. *Are nonexempt employees paid on a salaried basis still eligible for overtime?*

Yes, generally speaking, nonexempt employees must be paid at least the federal minimum wage for each hour worked and for overtime at a rate not less than one and one-half times the employee’s regular pay rate regardless of whether they are paid on an hourly, piece, salary, commission, or other basis.

3. *What if a state or locality has its own laws about who is entitled to overtime pay?*

The FLSA provides minimum standards and does not prevent a state or locality from establishing more protective standards.

4. *When is the Final OT Rule effective and how soon do I have to comply?*

While legal challenges have been filed, the first salary threshold increase under the final rule took effect July 1, 2024, with a second increase scheduled to take effect Jan. 1, 2025, and subsequent updates every three years effective July 1.

Summary of Final Overtime Rule Changes

DATE	STANDARD EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL (EAP) SALARY LEVEL	HIGHLY COMPENSATED EMPLOYEE (HCE) TOTAL ANNUAL COMPENSATION THRESHOLD
Before July 1, 2024	\$684 per week (equivalent to \$35,568 per year)	\$107,432 per year, including at least \$684 per week paid on a salary or fee basis.
July 1, 2024	\$844 per week (equivalent to \$43,888 per year)	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis.
January 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis.
July 1, 2027, and every 3 years thereafter	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.	

SOURCE: U.S. Department of Labor

What does the Final OT Rule mean for highly compensated (HCE) employees?

1. What is the HCE exemption under the FLSA?

To meet this exemption, an employee must:

- Have a total annual compensation of a certain amount per year
- Be paid on a salary or fee basis
- Be paid a minimum salary amount each week
- Perform office or non-manual work, and
- Customarily and regularly perform one or more of the exempt duties or responsibilities identified in the duties tests for the Executive, Administrative, or Professional (EAP) employee exemptions.

2. Since an employee might be eligible for exemption under both HCE and EAP employees exemption, is there a reason to keep track of HCEs separately?

Generally speaking, it is in an employer's best interest to understand which exemptions might apply to their employees, particularly when the employee's job duties indicate that more than one exemption might be applicable.

Talk with your Paychex rep to learn more.



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