

# FLSA EXEMPTIONS AND CHANGES

Rochester Human Resources Association

Daniel J. Ballintine and James A. Godwin

**Larkin  
Hoffman**  
ATTORNEYS

# To which employers/employees does the FLSA apply?

- Workers engaged in interstate commerce;
  - Production of goods for commerce;
  - Closely-related process or occupation directly essential (CRADE) to such production; or
  - Domestic service.
- Engaging in “interstate commerce” which may include:
  - Making telephone calls to other states;
  - Typing letters to send to other states;
  - Processing credit card transactions; and
  - Traveling to other states.

## To which employers/employees does the FLSA apply? (Cont.)

- In the following categories:
  - At least 2 employees
  - Sales greater than \$500,000;
  - Engaged in operations of a hospital or institution primarily engaged in care of sick, aged, or mentally ill;
  - Schools whether for profit or not; or
  - Engaged in a public agency activity.
- Does not apply to independent contractors
  - But it is easy to misclassify workers

# Key FLSA Requirements

- Display poster
- Record keeping: e.g. time and pay records
- Pay at least federal minimum wage
  - \$7.25 per hour
  - Must pay higher of state or federal minimum. In Minnesota, the state minimum is usually higher.
- **Pay a 150% premium for any hours over 40 in one week**
  - **168 consecutive hours**

# FLSA Exempt Employees

- Partial Exemptions-Healthcare and public service agencies
- White-Collar Exemptions
  - Executive,
  - Administrative, and
  - Professional Employees
  - Artistic or Creative Employees
  - Outside sales employees
  - Certain computer-related occupations
- Certain commissioned sales employees
- Agricultural/Farmworkers
- Certain transportation-related employees
- Domestic service workers
- Plenty more along with some partial exemption



# White Collar Exemptions


For the exemptions to apply, an employee must meet all three elements:

- Salary Level;
- Salary Basis; and
- Job Duties

# Executive Employees


- Compensation must exceed \$913 per week (as of December 1, 2016), will adjust going forward.
- Primary duties must consists of management.
  - Must customarily and regularly direct 2 or more employees.
  - Has authority to hire/fire employees or make recommendations given particular weight.
  - Regularly exercises discretionary powers.
  - Does not spend more than 20% of time on activities outside of the previous.

# Administrative Employees

- Compensation must exceed \$913 per week (as of December 1, 2016), will adjust going forward.
  - Primary duties must consist of office or non-manual work directly related to the management or general business operations; and
  - Primary duties must include the exercise of discretion and independent judgment on matters of significance.
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# Professional Employees

- Compensation must exceed \$913 per week (as of December 1, 2016) per week, will adjust going forward.
  - Primary duties must involve performance of work requiring advanced knowledge, which is primarily intellectual in nature and requires consistent exercise of discretion and judgment;
  - The knowledge must be in a field of science or learning; and
  - The knowledge must be customarily acquired by prolonged courses of specialized instruction.
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# Non-Exempt Professions

- ▶ Licensed practical nurses (LPNs)
- ▶ Accounting clerks and bookkeepers who normally perform a great deal of routine work
- ▶ Cooks who perform predominantly routine mental, manual, mechanical or physical work
- ▶ Paralegals and legal assistants
- ▶ Engineering technicians

But, these could fall under another exemption such as a paralegal with administrative duties.


# Salary Level

For most employees, the minimum salary level required for exemption as of December 1, 2016 will be \$913 per week.


Must be paid “free and clear”

The \$913 per week may be paid in equivalent amounts for periods longer than one week.

# Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
  - The compensation cannot be reduced because of variations in the quality or quantity of the work performed
  - Must be paid the full salary for any week in which the employee performs *any* work
  - Need not be paid for any workweek when no work is performed
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# NEW FLSA RULES – EFFECTIVE DECEMBER 1, 2016

- Salary level increase: \$913 per week
  - This will push the annual minimum from \$23,660 to \$47,476
  - Quarterly catch-up can be made with non-discretionary bonuses up to 10% of required salary
  - In the future, the minimum salary level will continue to adjust with inflation.
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# NEW FLSA RULES

- Not Changed: -- Salary basis does not apply to several exemptions:

Teachers

Doctors

Lawyers

Outside Salespeople

Computer Professionals

Also Not Changed: -- No change to duties tests

# NEW FLSA RULES

## New Threshold for Highly Compensated Employees

\$134,004

Still must receive weekly salary of no less than \$913

Still must perform at least one exempt duty and perform office or non-manual work

Still permits one catch up discretionary payment each year (not quarterly)

# NEW FLSA RULES

## Salary minimums will be automatically updated

Every 3 years

DOL will publish new rates 150 days before their new effective dates—expected to be January 1, 2020 and every 3 years thereafter

Expected to be over \$50,000 in 2020

Will be tied to 40<sup>th</sup> percentile of wage census for most exemptions

Will be tied to 90<sup>th</sup> percentile of all salaried workers (for the HCE exemption)



# How to Respond to the Change

- Audit employees' work hours to assess the best response for each position.
- Increase any exempt employee to at least the new minimum salary.
- Change employees who are paid less than the minimum to hourly/non-exempt status.
  - This will include paying overtime if an employee works more than 40 hours in a workweek.
- As part of any response, employers should budget for changes in labor costs.
- If positions are made non-exempt:
  - Keep track of hours including those worked remotely;
  - Be clear with employees about overtime expectations; and
  - Discipline employees if necessary for working unauthorized overtime, but
  - Do not fail to pay earned overtime even if it was not authorized.

# Questions

