

Changes to Overtime Rules

The U.S. Department of Labor (DOL) recently announced long-anticipated changes to overtime rules under the Fair Labor Standards Act (FLSA). Most significantly, the minimum salary an employee must earn in order to qualify under the so-called “white collar” exemptions is essentially doubling from \$23,660 per year to \$47,476 per year. The result will be that many more individuals will become eligible for overtime pay, including an estimated 10,000 workers in Vermont, when the changes go into effect on December 1, 2016.

The FLSA, a federal law enacted in 1938, provides certain protections for most U.S. workers, including minimum wage, child labor, and overtime pay requirements. The law does not cover elected officials, volunteers, independent contractors, or workers who qualify under certain exemptions as defined by the DOL. The overtime regulations require employers to pay an employee at a rate of one and one-half times the employee’s regular rate of pay for hours actually worked above 40 in a work week. Unlike the private sector, local governments are permitted in certain circumstances to provide paid time off (so-called “compensatory time”) instead of cash overtime compensation.

In order for a position to be classified as exempt from the FLSA, and therefore not eligible for overtime pay, two requirements must be met:

1. The worker must be paid at least the designated minimum weekly salary no matter how many or how few hours the person works in a given work week; *and*
2. The type of work performed must meet a “job duties test” for at least one of the exemptions specified by the DOL.

The FLSA regulatory changes that are most relevant to municipalities are:

- an increase to the minimum salary for Administrative, Executive, and Professional exemptions from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year);
- an increase to the minimum salary for the “Highly Compensated Employee” exemption from \$100,000 to \$134,004; and
- new automatic salary threshold updates every three years based on wage trends. (The next update will be January 1, 2020, with an anticipated salary of approximately \$51,000.)

The new rules provide an excellent opportunity for employers to review *all* exempt positions to ensure they meet both the duties test and minimum salary threshold. Requirements of the duties tests, which are not changing, are outlined on a [DOL fact sheet](#), which includes links to further details. Smaller towns that have only non-exempt employees, such as road crew members, will not be affected by these changes.

Although the changes are not effective until December, municipalities that currently have exempt employees are wise to assess their situation now in order to review their options and

communicate any changes in advance to affected employees. If a municipality discovers that a position meets one of the job duties tests, but not the new \$913 salary threshold, it may want to consider a pay increase as a means to preserve the exempt status of that position. Alternatively, if an employee becomes non-exempt, the municipality may consider these strategies: hire additional part-time or temporary staff to reduce overtime hours, implement a policy that precludes overtime work without prior authorization, implement a compensatory time (comp time) policy to help manage the budget pressures of overtime pay, or provide for additional overtime pay in the budget. *While a collective bargaining agreement never pre-empts law, municipalities with unions should examine whether any union position will be affected and, if so, assess how the terms of the contract may affect their response to these regulatory changes.*

It is important to communicate in advance to employees who will be affected by the changes in the law and any commensurate changes that will be implemented by the municipality. For instance, there may be a change to timekeeping methods for an employee who becomes newly non-exempt to ensure that all hours worked are reported. Or members may need to address whether non-exempt employees will be permitted to check email or perform other work from home. Any policy changes, such as requiring pre-authorization for overtime work or implementing a new comp time policy, must be carefully communicated to employees as well.

For further assistance with assessing your municipality's situation and available options, please contact the Municipal Assistance Center at 800-649-7915 or MAC-HR@vlct.org.

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