



Proposed Changes to Fair Labor Standards Act (FLSA)

Manager & Supervisor Training

March 29, 2016



Agenda Topics:

- ① **Overview of the Fair Labor Standards Act**
- ② Department of Labor Proposed Changes
- ③ Next Steps for Managers
 - Review Potentially Affected Positions and Employees to Ensure Compliance with the DOL's proposed overtime rules
 - Options to Consider
 - Budget Preparation
 - Changes to Processes and Procedures
 - Managing Culture
- ④ Tools and Resources
- ⑤ Questions

Overview of the Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

Under the current regulations, a position must satisfy three criteria to qualify as exempt from overtime:

1. The incumbent in the position must be paid on a salaried basis (the salary basis test);
2. The salary must be at least \$455/week, or \$23,660 annually (the minimum salary requirement or salary threshold);
3. The position's "primary duties" must be consistent with executive, professional, or administrative positions as defined by DOL (the primary duties test).

Current Primary Duties Exemptions

- **Executive:** The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise.
http://www.dol.gov/whd/overtime/fs17b_executive.htm
- **Administrative:** The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer, and exercise discretion and independent judgment with respect to matters of significance.
http://www.dol.gov/whd/overtime/fs17c_administrative.htm
- **Professional:** The employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning, customarily acquired by a prolonged course of specialized intellectual instruction.
http://www.dol.gov/whd/overtime/fs17d_professional.htm
 - Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment.
 - The salary and salary basis requirements do not apply to bona fide teachers.



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What are the proposed changes?

Minimum Salary Threshold will Significantly Increase

The proposed rule seeks an increase from the current threshold of \$23,660 to \$50,440.

The Threshold will Adjust Automatically in Subsequent Years

The proposed rule has an automatic escalator for the salary threshold, to keep pace with inflation.

Consideration of Making Changes to the Duties Tests

No changes are proposed to the primary duties test. WHD may be considering adopting a quantification requirement where employees have to perform the exempt primary duties “more than 50 percent” of the time.

The final guidance from the US Department of Labor is anticipated as early as May, but it could be July or even later. Once announced, we would typically have 60 days to implement the changes.

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Next Steps for Managers:

Review Potentially Affected Positions and Employees

Options:

- Supervisors are **NOT** required to move any employees to the new threshold. You can leave them at their current rate of pay, and they will become FLSA non-exempt (overtime eligible) because they no longer meet the minimum salary threshold. If an employee never works above 40 hours/week, this approach will not cost the institution any additional money.
- Work that exceeds 40 hours a week, however, would need to be compensated at time-an-a-half, with either overtime pay or compensatory time (comp time). Comp time may be accrued up to 240 hours, after which OT must be paid.
- It is important for Supervisors to consider the impact on internal salary equity against similarly-situated positions, and against higher-level positions within the unit in order to mitigate salary compression.

Review Potentially Affected Positions and Employees

- Review positions that are below the proposed salary threshold (\$50,440) and determine which ones, if any, you might want to adjust to the new threshold, so that those positions would remain exempt. This exercise would be appropriate for positions that are already fairly close to the new threshold.
- Before deciding to increase an employee's rate of pay, Supervisors must review the [position profile](#) and salary grade of the employee, and make sure a salary increase would be both inside the assigned range, and within the appropriate quartile of the range for the employee's performance, skill, and experience. Please see the "[Managing Pay Within a Grade Tool](#)" for further guidance in making this determination.

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Next Steps for Managers:

Prepare Your Fiscal Year Budget:

Even though we don't yet know the full impact of the exemptions, Supervisors need to estimate the impact a change will have on your 2016-17 budget and plan accordingly.

- Begin tracking the number of hours worked, over 40, if you don't have a good idea how many hours your employees are working each week.
- Calculate the resulting overtime cost of one hour of overtime, and multiply that by the typical number of hours, over 40 hours, your employees work.
- Assess the cost and possibility of additional headcount

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Next Steps for Managers

Consider what modifications to processes and procedures will be necessary.

- Will there be changes to the organizational structure and workload distribution?
- Non-exempt employees must use accrued leave or comp time to cover all absences from work.
- Meal and work breaks must be provided for non-exempt employees.
- Establish and discuss timekeeping procedures for the scheduling and planning of overtime hours, tracking travel, irregular hours, or fluctuating seasonal demands
- What impact, if any, will the funding source of the position have on the employee's work schedule?

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Next Steps for Managers

Consider how to respond to effects on morale and productivity.

- The changes will affect everyone, and how you communicate this change to employees may be as impactful as the change itself.
- Overtime should be arranged and approved by the supervisor before the employee works, however we must compensate the employee even if they do work unapproved hours over 40 in a week.
- It's important to offer the same choices for OT and Comp time to all non-exempt employees in the same unit.
- Create opportunities for discussion on how to address any scheduling changes, timekeeping, and prioritization of work.

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Tools and Resources

- Office of Human Resources, Classification and Compensation Team
 - Tracey Yee, Classification and Compensation Manager, 737-5426
 - Heather Riney, Classification and Compensation Officer, 737-3104
classification.compensation@oregonstate.edu
- Website: <http://hr.oregonstate.edu/policies-procedures/administrators/classification-compensation/proposed-revisions-fair-labor>
- OSU Leave Administration Policies, Procedures and Guidelines:
http://hr.oregonstate.edu/sites/hr.oregonstate.edu/files/documents/general/leave_admin_pol.pdf
- Your Business Center Human Resource Team:
 - <http://fa.oregonstate.edu/osu-shared-services>
- U.S. Department of Labor – FLSA Overtime Security Advisor:
 - <http://webapps.dol.gov/elaws/whd/flsa/overtime/menu.htm>
- Wage and Hour Division Fact Sheet:
 - <http://www.dol.gov/whd/overtime/nprm2015/factsheet.htm>

Question and Answer

