

TRAINING AND EMPLOYMENT NOTICE	NO. 36-15
	DATE May 23, 2016

TO: State Workforce Agencies
State Workforce Liaisons
Affiliate American Job Center Managers
Comprehensive American Job Center Managers
Community College Presidents
All Department of Labor Employment and Training Administration Grantees
Department of Labor Employment and Training Administration Regional Administrators
Department of Labor Veterans' Employment and Training Regional Administrators
Rapid Response Coordinators
State Apprenticeship Agencies
State Directors for Veterans' Employment and Training Governors
Job Corps Contractors
State Labor Commissioners
State Labor Market Information Directors
State Unemployment Insurance Directors
State Veterans Affairs Agency Directors
State Workforce Innovation and Opportunity Act Liaisons
State Workforce Agencies – Administrators
State Workforce Administrators Unemployment Insurance
State Workforce Administrators Workforce Innovation and Opportunity Act
State Workforce Administrators Wagner-Peyser
State Workforce Agency Veterans Coordinators
Advisory Committee on Apprenticeship
Trade Adjustment Assistance Leads
Workforce Development Board Local Chairs
Workforce Development Board State Chairs
Workforce Development Board State Executive Directors
Workforce Development Board Local Executive Directors
Workforce Information Council State Labor Market Directors

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Department of Labor Wage & Hour Division (WHD) Overtime Final Rule

1. **Purpose.** To announce the publication of the Final Rule Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees under the Fair Labor Standards Act.
2. **References.** Fair Labor Standards Act (FLSA), <https://www.dol.gov/whd/flsa/>
3. **Background.** In 2014, President Obama signed a Presidential Memorandum directing the Department to update the regulations defining which white collar workers are protected by the FLSA's minimum wage and overtime standards. Consistent with the President's goal of ensuring workers are paid a fair day's pay for a hard day's work, the memorandum instructed the Department to look for ways to modernize and simplify the regulations while ensuring that the FLSA's intended overtime protections are fully implemented.

The Department conducted months of extensive consultations with employers, workers, and other stakeholders to develop the proposed rule, published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on July 6, 2015 (80 FR 38515) and invited interested parties to submit written comments on the proposed rule at www.regulations.gov by September 4, 2015. The Department received over 270,000 comments in response to the NPRM from a variety of interested stakeholders. The feedback the Department received helped shape the Final Rule, [which was published in the Federal Register \(https://www.federalregister.gov/articles/2016/05/23/2016-11754/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and\)](https://www.federalregister.gov/articles/2016/05/23/2016-11754/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and) on May 23, 2016.

4. **Department of Labor Wage & Hour Division (WHD) Overtime Final Rule.** As a general matter, the FLSA requires that employees be paid minimum wage and overtime pay, unless an exemption applies. This Final Rule updates the regulations for determining whether white collar salaried employees are exempt from the Fair Labor Standards Act's minimum wage and overtime pay protections. Presently, they are exempt if they are (1) paid on a salary basis, (2) paid no less than the salary level test (currently \$455 per week, or the equivalent of \$23,660 for a full year worker), and (3) employed in a bona fide executive, administrative, or professional capacity, (as those terms are defined in the Department of Labor's regulations at 29 CFR part 541). This exemption from the FLSA is sometimes referred to as the "white collar" or "EAP" exemption.

The salary threshold set in the rule will help identify employees who are entitled to overtime pay when they work long hours. Employees earning under the threshold are entitled to overtime protection, while employees earning more than the threshold may be exempt from overtime protection depending on their job duties. The threshold has been updated only once in the last 41 years. The existing salary level is too low to work with the duties test it was paired with, and it has since been severely eroded by inflation.

To restore the effectiveness of the salary level test, the Department is increasing the standard salary level from \$455 per week (\$23,660 for a full-year worker) to \$913 per week (\$47,476 for a full-year worker).

There are no changes to the standard duties test for the “white collar” exemption. For employees with salaries above the salary level, employers will continue to use the same test to determine whether or not an employee’s duties entitle him or her to overtime pay.

This long-awaited update will provide a meaningful boost to workers and help ensure workers are compensated for their work. The final rule will strengthen overtime protections for salaried workers already entitled to overtime and provide greater clarity for workers and employers. The rule will also prevent a future erosion of overtime protections and ensure greater predictability. In order to prevent the salary level requirements from again becoming outdated and ineffective, the Department is establishing mechanisms for automatically updating the salary and compensation levels every three years to maintain them at the levels set in this rulemaking.

The rule takes effect on December 1, 2016.

5. **Action Requested.** The final rule contains further important details regarding the application of the “white collar” exemption. All ETA grantees and contractors should familiarize themselves with the final rule by reviewing the attached resources and visiting <http://www.dol.gov/WHD/overtime/final2016/> for additional information and upcoming technical assistance opportunities.
6. **Inquiries.** Please direct questions to the appropriate ETA regional office. ETA will work with the Wage and Hour Division to answer questions and help grantees and contractors plan for compliance with the rule, which takes effect December 1, 2016.
7. **Attachments.**
 - [Overview and Summary of Final Rule](https://www.dol.gov/sites/default/files/overtime-overview.pdf) (<https://www.dol.gov/sites/default/files/overtime-overview.pdf>)
 - [WHD Fact Sheet](https://www.dol.gov/WHD/overtime/final2016/overtime-factsheet.htm) (<https://www.dol.gov/WHD/overtime/final2016/overtime-factsheet.htm>) (Provides a technical overview of the key provisions of the final rule).
 - [Guidance for General Private Sector Employers](https://www.dol.gov/whd/overtime/final2016/general-guidance.pdf) (<https://www.dol.gov/whd/overtime/final2016/general-guidance.pdf>) (Discusses the basics of this exemption and options for implementation.)
 - [Guidance for Non-Profit Organizations](https://www.dol.gov/whd/overtime/final2016/nonprofit-guidance.pdf) (<https://www.dol.gov/whd/overtime/final2016/nonprofit-guidance.pdf>) (Provides particular guidance on issues that may be of interest to non-profit organizations, including guidance on enterprise coverage as it relates to charitable activities.)
 - [Guidance for Higher Education Institutions](https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf) (<https://www.dol.gov/whd/overtime/final2016/highered-guidance.pdf>) (Provides specific guidance on the exemptions for teaching, academic administrative professionals, and other unique provisions of the FLSA for educational institutions.)

- [Fact Sheet: Overtime Final Rule and State/Local Governments](https://www.dol.gov/sites/default/files/overtime-government.pdf) (<https://www.dol.gov/sites/default/files/overtime-government.pdf>) (Details FLSA provisions specific to state/local government employers, including topics such as compensatory time, and application to legislative branch employees.)
- [Fact Sheet 17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act](https://www.dol.gov/whd/overtime/fs17a_overview.htm) (https://www.dol.gov/whd/overtime/fs17a_overview.htm) (Provides a technical overview of the “white collar exemption” and duties test.)
- [Small Entity Compliance Guide to the FLSA’s “White Collar” Exemptions](https://www.dol.gov/whd/overtime/final2016/smallbusinessguide.pdf) (<https://www.dol.gov/whd/overtime/final2016/smallbusinessguide.pdf>) (Provides detailed information on the salary level tests, duties tests, and white collar exemptions.)