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## Understanding Changes to Federal Overtime Rules for 'White Collar' Workers

The new federal overtime rules go into effect on December 1, 2016. We have prepared a New Federal Overtime Rules Guide to provide essential information on the new federal rules.

### Background

The federal Fair Labor Standards Act (FLSA) provides an exemption from both minimum wage and overtime pay for employees employed as bona fide **executive**, **administrative**, and **professional** employees (white collar employees). To qualify for the exemption, a white collar employee generally must:

1. Be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the **salary basis test**);

**Note:** Administrative and professional employees may be paid on a **fee basis** rather than on a salary basis. If the employee is paid an agreed sum for a single job, regardless of the time required for its completion, the employee will be considered to be paid on a fee basis.

2. Be paid a minimum specified salary (the **salary level test**); and
3. Primarily perform executive, administrative, or professional duties, as defined in the federal regulations (the **duties test**).

**Highly-compensated employees** (HCEs) who are paid total annual compensation of a minimum specified amount and meet certain other conditions are also deemed exempt from the FLSA minimum wage and overtime pay requirements.

**Important Note:** *Job titles never determine exempt status. Receiving a particular salary, alone, does not indicate that an employee is exempt. Rather, in order for a white collar exemption to apply, an employee's specific job duties and earnings must meet all of the applicable requirements provided in the regulations. Keep in mind that when both the FLSA and a state law apply, the employee is entitled to the most favorable provisions of each law.*

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## New Requirements For Claiming A White Collar Exemption

Effective December 1, 2016, a [new rule](#) revises the white collar exemption requirements as follows:

White Collar Exemption	Salary Basis Test	Salary Level Test	Employee Duties Test
<b>Executive Employees</b>	Employee must be compensated on a salary basis	Employee earns not less than \$913 per week (up to 10% of salary level may be satisfied using nondiscretionary bonuses, incentives, and commissions, that are paid quarterly or more frequently)	<ul style="list-style-type: none"> <li>Primary duty must be managing the enterprise in which the employee is employed, or managing a customarily recognized department or subdivision of the enterprise;</li> <li>Must customarily and regularly direct the work of at least two other full-time employees (or their equivalent); and</li> <li>Must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight.</li> </ul>
<b>Administrative Employees</b>	Employee must be compensated on a salary basis or a fee basis	Employee earns not less than \$913 per week (up to 10% of salary level may be satisfied using nondiscretionary bonuses, incentives, and commissions, that are paid quarterly or more frequently) Note: Special rules apply for certain academic administrative personnel	<ul style="list-style-type: none"> <li>Primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and</li> <li>Primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.</li> </ul>
<b>Professional Employees</b>	Employee must be compensated on a salary basis or a fee basis <u>Note:</u> Requirement does not apply to doctors, lawyers, or teachers	Employee earns not less than \$913 per week (up to 10% of salary level may be satisfied using nondiscretionary bonuses, incentives, and commissions, that are paid quarterly or more frequently) Note: Requirement does not apply to doctors, lawyers, or teachers	Must primarily perform work that either requires advanced knowledge in a field of science or learning (usually obtained through a degree), or that requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

## New Requirements For Claiming A Highly-Compensated Employee Exemption

The exemption requirements for highly-compensated employees are different than those applicable to executive, administrative, and professional employees. Effective December 1, 2016, the requirements for HCEs to qualify as exempt from the FLSA minimum wage and overtime pay requirements are as follows:

Total Annual Compensation	Salary Test	Employee Duties Test
Employee must earn at least \$134,004 annually, which may include commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned during a 52-week period	Employee must receive at least a standard salary amount of \$913 per week on a salary or fee basis	<ul style="list-style-type: none"> <li>Primary duty must include performing office or non-manual work; and</li> <li>Must customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.</li> </ul>

## Comparison Of Current And New Overtime Exemption Requirements

The following chart highlights the key differences between the current regulations and the new final rule.

	Current Regulations (Effective from 2004 until December 1, 2016)	Final Rule (Effective December 1, 2016)
Salary Level Threshold for White Collar Employees	\$455 Weekly	\$913 Weekly
Highly-Compensated Employee (HCE) Total Annual Compensation Level	\$10,000 Annually	\$134,004 Annually
Automatic Salary/Compensation Level Adjusting	None	Every 3 years beginning on Jan. 1, 2020
Bonuses	No provision to count nondiscretionary bonuses and commissions toward the standard salary level	Up to 10% of standard salary level can come from nondiscretionary bonuses, incentive payments, and commissions, so long as employers pay those amounts on a quarterly or more frequent basis
Employee Duties Test	U.S. Department of Labor Fact Sheet #17A describes the standard duties for white collar employees	No changes to the duties test

# Increased Penalty for Violating EEOC Posting Requirements

Effective July 5, 2016, the maximum penalty for employers violating the notice-posting requirements under certain nondiscrimination laws enforced by the U.S. Equal Employment Opportunity Commission (EEOC) **increases from \$210 to \$525 for each separate offense.**

## The "EEO Is The Law" Poster

Employers with **15 or more employees** who have worked for the employer for at least 20 calendar weeks (in this year or last) are required to post a notice describing the [federal laws](#) prohibiting job discrimination based on race, color, sex, national origin, religion, age, disability, or genetic information. The notice must be posted in a conspicuous location in the workplace where notices to applicants and employees are customarily maintained.

## Posting Guidelines and Tips

The EEOC provides the following additional guidelines and tips for employers regarding the required ["EEO Is The Law" poster](#):

- In addition to posting the notice, employers are encouraged to display the electronic notice on their **internal websites** in a conspicuous location. In most cases, electronic posting supplements physical posting but **does not itself fulfill the basic obligation** to physically post the required information in the workplace. In some situations (e.g., for employees who telework and do not visit the employer's workplace on a regular basis), electronic posting **may be required in addition** to physical posting.
- The **Americans with Disabilities Act** requires that notices of federal laws prohibiting job discrimination be made available in a location that is accessible to applicants and employees with disabilities that **limit mobility**.
- Printed notices should also be made available in an accessible format, as needed, to persons with disabilities that **limit the ability to see or read**. Notices can be recorded on an **audio file**, provided in an electronic format that can be utilized by **screen-reading technology**, or **read to applicants or employees** with disabilities that limit seeing or reading ability.

Note that many states have their own nondiscrimination laws with notice-posting requirements that apply to smaller employers.

# Sample Notice Helps Employers Comply With New ADA Wellness Program Rules

A [sample notice](#) is now available from the U.S. Equal Employment Opportunity Commission (EEOC) to help employers satisfy new requirements for wellness programs under the federal Americans with Disabilities Act (ADA). The ADA applies generally to employers with **15 or more employees** who worked for the employer for at least 20 calendar weeks (in this year or last).

## New ADA Wellness Program Notice

Among other things, the new rules require employers offering wellness programs that collect employee health information to provide a notice to employees informing them what information will be collected, how it will be used, who will receive it, and what will be done to keep it confidential.



To learn about other federal notices required to be displayed in the workplace, visit our section on [Federal Poster Requirements](#).



Visit our section on [Wellness Programs](#) for additional details.

The requirement to provide the notice takes effect as of the first day of the plan year that begins **on or after January 1, 2017**. Employees must receive the notice before providing any health information, and with enough time to decide whether to participate in the wellness program.

### Q&As Provide Additional Guidance

To help employers comply with the new notice requirement, the EEOC also released a set of [Q&As](#) which clarify, among other things:

- Who must provide the notice;
- The format in which the notice should be provided;
- Whether an employee's signed authorization is required as part of the notice requirement; and
- Whether the current notice required under the federal Health Insurance Portability and Accountability Act (HIPAA) satisfies the new notice requirement under the ADA.

More information on the new ADA rules is available in previously released [Q&As](#) and a [fact sheet](#) from the EEOC.

## 5 Must-Have Forms and Records for New Hires

As an employer, one of your most important responsibilities when hiring new employees is to complete and secure necessary forms and records. The following are key requirements under federal law:

1. **Form I-9:** Federal law requires employers to verify that each new employee is legally eligible to work in the United States. Within 3 business days of the date employment begins, employers must complete and sign Section 2 of [Form I-9, Employment Eligibility Verification](#), using original documents presented by the employee that show his or her identity and authorization to work in the U.S.
2. **Employee's Social Security Number (SSN):** Employers are required to get each employee's name and SSN for purposes of completing year-end Forms W-2. After an employee is hired, the employer should ask to see his or her social security card and record the new employee's name and SSN from the card. Any employee without a social security card should apply for one.
3. **Form W-4:** To know how much income tax to withhold from employees' wages, employers should have a [Form W-4, Employee's Withholding Allowance Certificate](#), on file for each employee. Ask all new employees to give you a signed Form W-4 when they start work, and make the form effective with the first wage payment.
4. **New Hire Reporting:** Federal law requires that employers report any new employee to a designated state new hire registry within 20 days (or shorter, depending on the state) of the date of hire. Many states accept a copy of Form W-4 with employer information added. The federal government maintains a list of links to [state agencies](#) where employers can learn more about reporting new hires and the specific requirements they must meet.
5. **Notice of Coverage Options (Exchange Notice):** Employers are required to provide each new employee a written notice with information about a Health Insurance Exchange at the time of hiring, within 14 days of the employee's start date. [Model language](#) is available from the U.S. Department of Labor.

Keep in mind that many states require additional forms and other records to be completed when a new employee begins work. Certain states and localities may also require employers to provide specific notices to newly hired employees.



Other key steps in the new hire process are featured in our [Onboarding](#) section.

# Tips for Keeping Employees Motivated During the Summer

The warm weather and eagerly anticipated outdoor activities of summer may take a toll on your workers' concentration. If you're noticing a lack of focus among your employees during this time of year, consider the following ideas to help keep them motivated:

- **Encourage employees to step outside for at least 15 minutes each day.** Exposure to natural sunlight can prevent workers from feeling confined to the office during the warm summer months. Encourage employees to take a brisk walk, and consider holding business meetings outside to help boost morale.
- **Change things up!** Employees may become more motivated when their jobs are more challenging and interesting. Consider lateral moves to build your workers' skill levels and knowledge base.
- **Create opportunities for casual interaction.** A company sports team, a family day, or an outdoor after-hours social event can keep your employees engaged and interested in each other and in their workplace.
- **Consider flexible working arrangements.** Arrangements such as flextime or staggered work hours may allow employees to enjoy summer activities and attend to family obligations, while coming to work refreshed. It's a good idea for employers to work with a knowledgeable employment law attorney when creating policies on flexible working arrangements, to ensure policies and practices are in compliance with the law and do not unlawfully discriminate against certain employees.

Our section on [Motivating Employees](#) offers additional strategies to help you motivate your workers at any time of year.



[Motivating Employees](#) is easy – visit our site for year-round strategies.

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*Marshall & Sterling Insurance will continue to provide you with updates and information regarding important issues. Should you have specific questions or need more information, please contact us.*

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