

# Paytime™



Tuesday,  
March 28, 2017


## COMPLIANCE WITH THE NEW DOL OVERTIME RULES

Tricia Richardson, CPP, SPHR, SHRM-SCP  
Partnership Coordinator

### Disclaimers

As part of our continued tradition and commitment to our Customer as well as the Community we serve, Paytime, Inc. is honored to provide this and many other educational resources. This presentation is being offered, and was developed, to provide timely and accurate information delivered by a subject matter expert to the audience in attendance. This material and presentation is offered with the understanding that the presenter(s), publisher(s), sponsor(s) and Paytime, Inc. are not engaged in rendering legal, accounting, or other professional services. This presentation is meant to provide general and summary information only. The subject matter is not specific to any company, individual or industry and none should be implied. No attorney-client relationship or consultant-client relationship has been created and no legal or other professional advice is implied nor inferred. If legal, accounting, consulting or other professional advice is needed, those services from a licensed professional in good-standing should be acquired. By attending this educational event, you agree to release Paytime, Inc., its subsidiaries and affiliates and each of their respective shareholders, officers, directors and Employees from any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind arising from your use of this presentation and/or educational resource(s) and any and all information contained herein. The attendee and participant assumes all responsibilities for the use, contents, interpretations and any circumstances resulting from the aforementioned.

## AGENDA

- **WHAT ARE (WERE) THE NEW RULINGS?**
  - **DUTIES TEST REVIEW**
  - **WHAT WAS THE IMPACT TO NON-PROFITS?**
  - **ARE THERE ANY EXEMPTIONS?**
  - **WHERE ARE WE NOW?**
- 
- A decorative graphic in the bottom right corner consisting of several overlapping, semi-transparent geometric shapes in shades of teal, blue, and purple.

Topic	Current Regulations	Effective December 1, 2016
Minimum Salary Requirements	\$455 weekly; \$23,660 annually	\$913 weekly; \$47,476 annually*
Bonus Impact	No provision to allocate nondiscretionary bonuses and commissions as part of the minimum salary requirements	Nondiscretionary bonuses, incentive payments and commissions (paid at least quarterly) can be counted for up to 10% of the minimum salary requirements (allocated to the period it represents)
Exempt Duties Test	An Employee's work MUST meet the requirements outlined in the Exempt Duties Test to qualify as Exempt (salary)	No change
Highly Compensated Minimum Salary Requirements	\$100,000 annually	\$134,004 annually**

\* Based on 40<sup>th</sup> percentile of FT salaried workers in the lowest wage Census Region (currently the South)

\*\* Based on 90<sup>th</sup> percentile of FT salaried workers nation-wide

Topic	Current Regulations	Effective December 1, 2016
Automatic Adjustments to Minimum Salary Requirements	No provision	Automatic Adjusting every 3 years; Automatic Adjusting: DOL - WHD will publish all updated rates in the Federal Register at least 150 days before their effective date, and also post them on the Wage and Hour Division's website. The 1st update will take effect on January 1, 2020.

## [Final DOL Overtime Rules](#)

## [Census Information](#)

- **Special salary level for Employees in American Samoa updated to \$767 per week**
- **Special “base rate” for Employees in the motion picture industry updated to \$1,397 per week**
- **Hourly rate for the Computer Employee Professional Exemption has not changed - remains at \$27.63 per hour**

### Highly Compensated Employees (HCE) **NOT RECOGNIZED IN PA**

**Q. Does the Final Rule change how employers may use bonuses to satisfy the salary level for highly compensated employees (HCEs)?**

**A. No, the Department has not made changes to how employers may use bonuses to meet the salary level component of the HCE test. To claim the HCE exemption...**employers must pay...\$913 per week on a salary or fee basis**, while the remainder of the total annual compensation may include commissions, nondiscretionary bonuses, and other nondiscretionary compensation. Because employers may fulfill almost two-thirds of the HCE total annual compensation requirement with commissions, nondiscretionary bonuses, and other forms of nondiscretionary deferred compensation, **the Department determined that it would not be appropriate to permit employers to also use nondiscretionary bonuses and incentive payments to satisfy the standard salary amount.****

# Executive Exemption



- The Employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The Employee must customarily and regularly direct the work of at least two or more other full-time Employees or their equivalent; and
- The Employee 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.

# Administrative Exemptions



- 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 or the employer's customers; and
- The Employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.



### Professional Exemption

- The Employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.



# Creative Professional Exemption & Computer Employee Exemption



## Creative Professional Exemption

The Employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

## Computer Employee Exemption – **NOT RECOGNIZED IN PA**

- The Employee must be compensated **either** on a salary basis of \$913 per week **or**, if paid on an hourly basis, at a rate not less than \$27.63 an hour;

# Computer Employee Exemption

(continued)



- The Employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- A combination of the aforementioned duties, the performance of which requires the same level of skills.

## Outside Sales Exemption



- The Employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The Employee must be customarily and regularly engaged away from the employer's place or places of business.

## Teacher



- "...primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed... However, private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments..."

### **Field of Science or Learning (Refer to Section 541.301 Learned professionals)**

Law  
Medicine  
Theology  
Actuaries  
Engineers  
Architecture  
Physical, Chemical & Biological Sciences  
Pharmacists  
Registered or Certified Medical Technologists

Nurses  
Dental Hygienists  
Physician Assistants  
Accountants  
Chefs  
Paralegals  
Athletic Trainers  
Funeral Directors or Embalmers

# Blue Collar Workers



**Per the DOL:** “The exemptions provided by FLSA Section 13(a)(1) apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. **FLSA-covered**, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremens, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.”

# Police, Fire Fighters, Paramedics & Other First Responders



**Per the DOL:** “The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.”

[Fact Sheet #14A - DOL Non-Profit Orgs FLSA](#)

[Do I Have To Comply With The FLSA?](#)

**Per the DOL (in general):** Non-Profit organizations would only be subject to the New Regulations if they are an “enterprise” covered by the FLSA

- must have at least two Employees
- have an annual dollar volume of sales or business done of at least \$500,000
- hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies

**Individual Employees are covered even if the “enterprise” is not covered if their work regularly involves them in commerce between States**

**Per the DOL: Examples of Employees who are involved in interstate commerce include those who: produce goods (such as a worker assembling components in a factory or a secretary typing letters in an office) that will be sent out of State, regularly make telephone calls to persons located in other States, handle records of interstate transactions, travel to other States on their jobs, and do janitorial work in buildings where goods are produced for shipment outside the State.**



### Computer Exemption - Pennsylvania

For example, the Federal rules do not require overtime for computer employees. However, Pennsylvania law currently requires overtime for computer employees. accordingly, overtime must be paid to computer employees if there are no other Pennsylvania laws excluding these employees from overtime.

### Highly Compensated Employee - Pennsylvania

#### Differences Between Overtime Requirements

Current Pennsylvania law and regulations requiring overtime payment remain in effect and will be enforced regardless of the changes to the federal rules. For example, Pennsylvania does not allow an employer to restrict overtime if an employee earns a certain salary. The revised federal regulations allow an employer to restrict overtime if an employee is earning over \$100,000 annually. However, this federal exclusion does not apply to Pennsylvania employees because of Pennsylvania law.

## WHERE ARE WE NOW

### What DID happen BY December 1<sup>st</sup>

- The penalty increased to “...up to \$1,925 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act” (Fair Labor Standards Act)

### **21 States, United States Chamber of Commerce, Business Organizations – “DOL did not have the authority”**

On November 22, 2016, U.S. District Court Judge Amos Mazzant granted an Emergency Motion for Preliminary Injunction and thereby enjoined the Department of Labor from implementing and enforcing the Overtime Final Rule on December 1, 2016. The case was heard in the United States District Court, Eastern District of Texas, Sherman Division (State of Nevada ET AL v. United States Department of Labor ET AL No: 4:16-CV-00731). The rule updated the standard salary level and provided a method to keep the salary level current to better effectuate Congress's intent to exempt bona fide white collar workers from overtime protections.

## WHERE ARE WE NOW

### January 20, 2017: Memorandum for the Heads of Executive Departments and Agencies (would apply to DOL Overtime Rule)

“With respect to regulations that have been published in the OFR but have not taken effect, as permitted by applicable law, temporarily postpone their effective date for 60 days from the date of this memorandum, subject to the exceptions described in paragraph 1, for the purpose of reviewing questions of fact, law, and policy they raise. Where appropriate and as permitted by applicable law, you should consider proposing for notice and comment a rule to delay the effective date for regulations beyond that 60-day period. In cases where the effective date has been delayed in order to review questions of fact, law, or policy, you should consider potentially proposing further notice-and-comment rulemaking.”

### Department of Labor Secretary

February 16, 2017: Andrew Puzder’s Confirmation Hearing for Department of Labor Secretary – withdrew from consideration (lack of support)

Alexander Acosta current nominee: “Unlike Andy Puzder, Alexander Acosta’s nomination deserves serious consideration,” AFL-CIO President Richard Trumka said in a statement. “In one day, we’ve gone from a fast-food CEO who routinely violates labor law to a public servant with experience enforcing it.”

Another 60-day extension has been requested for DOL to prepare their Brief

## WHERE ARE WE NOW

Bill	Summary	Latest Action
<a href="#">H.J.Res.95</a>	This joint resolution declares that: Congress disapproves the rule submitted by the Department of Labor relating to defining and delimiting the exemptions from minimum wage and overtime pay requirements for executive, administrative, professionals, outside sales, and computer employees under the Fair Labor Standards Act of 1938; and such rule shall have no force or effect.	06/16/2016 Referred to the House Committee on Education and the Workforce.
<a href="#">H.Res.836</a>	Declares that the House of Representatives disapproves of the final rule published by the Department of Labor relating to defining and delimiting the exemptions for executive, administrative, professional, outside sales, and computer employees under the Fair Labor Standards Act of 1938.	07/14/2016 Referred to the House Committee on Education and the Workforce.
<a href="#">H.R.6094</a>	(Sec. 2) This bill postpones from December 1, 2016, until June 1, 2017, the effective date of a final rule of the Department of Labor (81 Fed. Reg. 32552 [May 23, 2016]) revising income thresholds for determining overtime pay for executive, administrative, professional, outside sales, and computer ("white collar") employees exempt from regular minimum wage and overtime pay requirements.	11/15/2016 Read the second time. Placed on Senate Legislative Calendar under General Orders.

## WHERE ARE WE NOW

Bill	Summary	Latest Action
<a href="#">S.3462</a>	This bill postpones from December 1, 2016, until June 1, 2017, the effective date of a final rule of the Department of Labor revising income thresholds for determining overtime pay for executive, administrative, professional, outside sales, and computer ("white collar") employees exempt from regular minimum wage and overtime pay requirements.	09/29/2016 Read twice and referred to the Committee on Health, Education, Labor, and Pensions.
<a href="#">S.3464</a>	This bill amends the Fair Labor Standards Act of 1938 (FLSA) with respect to exemptions from minimum wage and maximum hour requirements for executive, administrative, professional and outside sales employees to increase over a five-year period the salary threshold for such exemptions, beginning on December 1, 2016, with a subsequent increase on December 1, 2018, and each December 1 through 2021.	11/15/2016 Read the second time. Placed on Senate Legislative Calendar under General Orders.

## WHERE ARE WE NOW

Bill	Summary	Latest Action
<a href="#">S.J.Res.34</a>	This joint resolution declares that: Congress disapproves the rule submitted by the Department of Labor relating to defining and delimiting the exemptions from minimum wage and overtime pay requirements for executive, administrative, professionals, outside sales, and computer employees under the Fair Labor Standards Act of 1938; and such rule shall have no force or effect.	06/07/2016 Read twice and referred to the Committee on Health, Education, Labor, and Pensions.

## WHERE ARE WE NOW

### Maybe...

- 1<sup>st</sup> - Know the State Regulations – some do have protections (like PA for Computer Professionals)
- 2<sup>nd</sup> - The New DOL Secretary could drop the issue
- 3<sup>rd</sup> - The other Senate or House Bills could still go forward
- 4<sup>th</sup> - American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) could intervene (maybe) if the DOL drops the appeal
- 5<sup>th</sup> - Judge Mazzant could issue a “summary judgement” – ending the appeals process
- 6<sup>th</sup> - Business as usual and this would be all for naught
- 7<sup>th</sup> - Something altogether different

# QUESTIONS?

