A **Decision Making Guide** for the **Federal Labor Standards Act (FLSA)**

New Exempt Employee Minimum Salary Rule, effective January 1, 2020

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PART ONE

FLSA Changes

DECISION MAKING GUIDE

This guide is the first of a two-part series developed by our HR Support Center to assist employers in complying with the new minimum salary threshold that applies to many white collar employees.

What do you mean by "New Rule"?

The Fair Labor Standards Act requires that employees earn a minimum wage as well as overtime pay for hours worked over 40 in a week, but it also provides that employees who perform certain job duties may be exempt from these requirements. The Department of Labor (DOL) has the power to make rules that relate to these exemption categories, including what duties will qualify an employee for an exemption, how they are paid, and how much they are paid.

The new rule – effective January 1, 2020 – increases the minimum salary required for many employees to qualify as exempt. Previously, the minimum salary for all executive and administrative employees, and many professional employees, was $455 per week, or $23,660 per year. The new minimum is $684 per week, or $35,568 per year.

The new rule also increases the minimum salary for employees who are exempt under the highly compensated employee exemption. That minimum will go from $100,000 per year to $107,432 per year.

What should we do first?

We recommend that employers decide what course of action they will take for affected employees and begin to plan for how those changes will be implemented. In this guide, we will focus on the four main steps employers need to take in making decisions about what their course of action will be:

1. Identifying which exempt employees could be affected
2. Calculating the hours worked by affected exempt employees
3. Evaluating the options and making a decision about how, and how much, the employee will be paid starting in 2020.

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STEP 1

IDENTIFY AFFECTED EXEMPT EMPLOYEES

Identify the organization's exempt employees that are paid at or below $35,568. As a best practice, consider identifying exempt employees at or below $38,000, so wage compression can be part of your big picture evaluation.

What is Wage Compression?

When the salary floor for a position is increased but the ceiling is not, wage compression occurs for a particular position or tier of positions. For example: Joe is new to the company and making $33,000; Ed has the same title as Joe but has been in the position for 3 years and is making $36,000. The company elects to increase new-guy-Joe's salary to the new minimum so he can remain exempt, making Joe and Ed's salaries nearly equal. This is wage compression and should be avoided whenever possible, so your more experienced or higher-ranking employees feel they are being treated fairly.

STEP 2

CALCULATE TOTAL HOURS WORKED by EACH EMPLOYEE from STEP 1

In order to properly assess compensation in the upcoming steps, it's necessary to first determine an accurate number of hours worked for each employee identified in Step 1.

Why go to the trouble?

Failure to properly estimate an employee's hours worked may lead to shocking results when you reclassify them as hourly. For instance, calculating and employee's new hourly rate based on the assumption that they're working 40 hours per week could lead to a huge amount of unexpected overtime liability if the employee has actually been working more than 40 hours per week on a regular basis.

However, asking exempt employees to begin tracking hours worked without providing detailed reasoning may cause confusion. You'll want to clearly communicate with employees that this is for tracking and preparation purposes only and will have no effect on their current salary. The sole purpose is to prepare for compliance with the new laws – not micromanagement.

In order to get the information you need, you'll have to ask your exempt employees to do something new: track their time. How to go about this is up to you, but here are a few options to measure current hours worked: Ask the employees to begin tracking their hours worked. This is our preferred method, as it will likely result in the most accurate timekeeping records. You can ask employees to use the same timekeeping system as non-exempt employees, have them track their time on the computer, on a paper timecard, or even on a phone app – it's up to you.

→ Ask managers to begin tracking hours worked for their exempt employees.

→ Ask managers to estimate the number of hours worked for each of their exempt employees.

→ Utilize the standard company workweek (e.g. Monday through Friday, 8:30am to 5:00pm), or the standard workweek for the position in question, then estimate the number of hours worked in excess of 40 per week.

STEP 3

EVALUATE the OPTIONS and DECIDE on APPROPRIATE COMPENSATION

Identify each employee's current base salary and total incentive pay (bonuses, commissions, any other incentive pay). Add these amounts to get their total annual earnings.

Compare this amount to the following pay options:

→ **Increasing the employee's pay to $35,568.**

→ **Re-classifying the employee as hourly non-exempt and paying them at a rate determined by their current salary divided by 2,080.** This simple equation works best if the employee currently works around 40 hour per week on average.

- Calculation for hourly rate of pay: total annual earnings ÷ 2,080 hours (40 hours per week for the full year)
- **Example:** 32,000 ÷ 2,080 = $15.38 per hour

→ **Re-classifying the employee as hourly non-exempt and calculating a cost-neutral rate of pay.** This rate of pay accounts for overtime the employee is doing currently and provides an hourly rate of pay which will result in the employee making approximately the same amount annually when paid by the hour as they did when they were on salary. This equation works best for employees who regularly work overtime. However, if they work a lot of overtime in a state with a higher than federal minimum wage, their rate could end up at or below minimum wage.

- Calculation for cost-neutral hourly rate of pay: annual earnings ÷ (2,080 + (annual overtime hours x 1.5))
- **Example:** $32,000 ÷ (2,080 + (260 x 1.5)) = $12.96 per hour

→ **Re-classifying the employee as salaried non-exempt and paying them the same each week they work 40 hours or fewer, and overtime when they work more than 40 hours.** With this classification you may continue to pay an employee on a salary basis – meaning a fixed base amount each week – but you'll still have to pay them time and a half for hours over 40 each week. You'll need to continue to carefully track their hours to ensure they always receive overtime pay if due. If using this classification, you should use their base weekly or yearly salary to determine their overtime rate.

- Calculation for overtime rate of pay: total annual earnings ÷ 2,080 hours x 1.5
- **Example:** $32,000 ÷ 2,080 x 1.5 = $23.08 per hour, for hours over 40 in a workweek

CONSIDER the BIG PICTURE

Wage compression was mentioned above, but you should also consider the effects of giving certain employees raises while others stay at the same rate of pay – even if they are in different job types. For instance, if several male employees received raises to bring their salary up to the new threshold, but a female employee who was already above the threshold did not receive a raise (or even received a pay cut to help balance the books), that could cause considerable trouble, even if only from a morale perspective.

Whenever possible, attempt to classify all employees in a particular job group or position the same way. If this can't be done, document your business reasons for the different classifications.

Also consider whether or not incentive pay will continue to be provided to employees who will not be classified as non-exempt. Providing incentive pay to non-exempt employees can complicate overtime calculations, since those incentive payments must be included in an employee's base pay when determining their overtime rate. Essentially, incentive payments will increase an employee's base pay rate and thus increase their overtime rate for that week as well. Although incentive payments can continue to be a great motivator, a little more math is required when they are provided to non-exempt employees who work overtime.

* ***Salaried non-exempt*** is a somewhat risky classification, so we recommend caution here. This pay classification requires strict timekeeping, just as for all non-exempt employees, in order to determine overtime eligibility. This includes keeping track of when these employees begin and end work each day as well as compliance with any state-mandated meal period requirements.

* ***Incentive what?*** Incentive pay includes non-discretionary bonuses, commissions, and any other non-hourly pay.

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PART TWO

FLSA Changes

IMPLEMENTATION GUIDE

This guide will assist you in making changes in order to comply with the new exempt employee minimum salary rule, effective January 1, 2020.

What should we be doing now?

Here we focus on implementation of changes your organization may need to make in the wake of the final rule. Here are the steps in that process that we'll be looking at:

1. Considering the company's policies and practices
2. Communicating the changes internally
3. Conducting training to ensure understanding and compliance
4. Monitoring and revising company budgets and processes

This guide also features the following resources:

→ Sample memo to employees regarding time tracking measures

→ Sample FLSA reclassification letter to employees

→ FAQs

STEP 1

CONSIDER THE COMPANY'S POLICIES & PRACTICES

With the possible reclassification of a number of your organization's employees, we recommend reviewing your current policies and procedures. This is especially important for organizations who don't currently have many non-exempt employees, and therefore may not be as focused on policies that deal with timekeeping and work hours.

If these policies and practices aren't currently covered in your employee handbook, we recommend adding them now, or distributing them separately as handbook amendments. Once distributed, employees should sign-off to acknowledge their acceptance and understanding of these important policies. If your policies and practices are already covered in your handbook, now is a good time to reemphasize them with the newly classified employees.

Changing habits can be a challenge, but changing the habits of your formerly exempt employees with regards to timekeeping is critical to prevent a wage and hour violation. These employees are likely used to "running the clock" after hours – many of them may be used to responding to work email, finishing up projects, taking client calls, or engaging in other work tasks during non-work hours. While

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intentionally working off-the-clock may not be your employee's goal, we want to be sure that the policies are clear about expectations with respect to off-the-clock work and the organization's commitment to recording all time worked by non-exempt employees.

THE GOLDEN RULE

While reviewing the recommended policies, keep in mind the golden rule of wage and hour: non-exempt employees must be paid for all time they are "suffered or permitted" to work. This doesn't just mean time in the office, but all time, whether approved by the employer or not.

→ TIMEKEEPING POLICIES AND PRACTICES

Consider that your previously exempt employees may not be familiar with your time-keeping procedures, e.g., how to track time worked, limits on clocking in before their scheduled start time, how to properly track evening work to check emails, how and when to turn in their time for each pay period.

→ OFF-THE-CLOCK WORK POLICY

All hours worked by a non-exempt employee must be recorded and compensated, even those performed outside of the employee's standard shift. Therefore, it's critical to have a policy in place that informs employees that all time worked must be tracked, and that off-the-clock work is prohibited by the company. In other words, employees must follow their written work schedule and may be disciplined for not doing so. Please note that refusing to pay for unauthorized time worked – whether it's regular or overtime – is not permissible.

→ BRING YOUR OWN DEVICE POLICIES

If a non-exempt employee checks their work email on their personal device (e.g. smart phone, tablet, or home computer), time spent working on this device is considered time worked, and should be tracked and paid accordingly. Many employers don't allow a non-exempt employee to use their personal devices for work purposes for this very reason, or only allow such use upon authorization from the company. Additionally, a good Bring Your Own Device policy will require that employees accessing company information from their device have security measures in place to protect the company's confidential information.

→ MEAL AND REST PERIOD POLICIES

Many states require meal and/or break periods for non-exempt employees, depending on the length of their shift, and many companies choose to provide meal and break periods voluntarily. It's important to inform employees of these breaks and your clock in/out procedures, and to notify them that no work should be performed during such breaks. Again, if work is performed, it must be compensated, so the policy should include instructions for notifying a manager or supervisor if a working meal period occurs.

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→ OVERTIME POLICIES AND PRACTICES

Now is the time to ensure that you're familiar with your state and local overtime laws. Although most employers will only be subject to the federal requirement to pay time and one-half for hours worked over 40 in one workweek, Alaska, California, Colorado, and Nevada each have daily overtime provisions, and Massachusetts and Rhode Island require some employers to pay a premium for work on Sundays and certain holidays. It's important that employees and managers are aware of the rules for compliance.

Additionally, if the company requires pre-authorization of overtime worked in order to stay on budget and control spending, it's best to share these expectations via an overtime policy.

→ TRAVEL TIME POLICIES AND PRACTICES

Since non-exempt employees must be paid for all time worked, travel time for those customarily engaged in work travel may require further consideration. There are a few narrow exceptions when travel time isn't payable (e.g. when the employee is a passenger in a vehicle or during a standard morning/evening commute), but it's good to assess an employee's travel schedule to ensure proper pay.

→ PAYROLL CHANGES

Incentive Pay: Payroll changes are especially relevant as they relate to issuing incentive pay (non-discretionary bonuses, commissions or any other non-hourly pay) to non-exempt employees. Per FLSA requirements, overtime must be calculated weekly based on the employee's "regular rate of pay." However, incentive pay must be included in the employee's "regular rate of pay" calculation. For weeks in which a non-exempt employee earns both overtime and incentive pay – whether provided at the time or retroactively – the company must calculate (or recalculate) the employee's regular rate of pay so that it includes both their base pay and incentive pay for the week, then utilize the new amount for overtime calculations. Please see the FAQs at the end of this guide for an example calculation.

Workweek: It's important that the individual responsible for payroll, along with managers and employees, are well-aware of the company's 7-day workweek. Every company must have an established workweek that is not adjusted or altered to avoid overtime. Each workweek is assessed individually for overtime calculations, and over-time must be paid for each workweek in which it is earned.

NOTE

*Arrangements where an employee receives amounts of time off (also known as compensatory or "comp time") in place of overtime wages are **not permitted** for non-exempt employees of private employers. Non-exempt employees are due all applicable overtime pay for applicable overtime hours worked in the workweek.*

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STEP 2

COMMUNICATE THE CHANGES

Applicable changes need to be communicated clearly to the whole company. Things to consider:

→ WHO WILL COMMUNICATE THESE CHANGES?

Think about the size and structure of your organization, and who is most capable of getting the message to all employees in an efficient and positive manner. Consider managers, the executive team, and your human resources professional.

→ WHO DO WE NEED TO COMMUNICATE WITH?

Decide if you will only discuss changes with newly non-exempt employees or if a company-wide notification makes the most sense. The latter may be preferable if the changes will impact a number of employees whose status is not changing. For instance, if numerous work schedules will need to be rearranged, if employees who used to answer multiple internal questions on weekends will no longer be able to, or if the lunch room is going to be much more crowded, then you may want to extend your notification to all (or most) employees.

→ WHAT WILL BE COMMUNICATED?

A sample letter is provided at the end of this guide. An editable Word document version of this letter can also be found in the Support Center by searching “FLSA Reclassification Letter” in the Documents section. The letter includes the following:

→ A high-level overview of the FLSA changes

→ The decision-making process for FLSA classification

→ New classification as non-exempt

→ Changes to compensation structure beyond classification as non-exempt

→ Company policies and practices for non-exempt employees

→ HOW WILL CHANGES BE COMMUNICATED?

This communication may be in the form of an email, web meeting, live meeting, or one-on-one meetings. We recommend several communications over the course of time, beginning with a high-level overview. Reminders even after the change in classification will be necessary to make certain that new policies and practices are understood and followed.

→ WHAT IS THE TIMING FOR COMMUNICATION?

Some states have requirements for advance notice of any changes to pay. Others require issuing written notice of the change.

For employers in states that don't have specific notice requirements, we recommend providing employees with advanced notice of at least one pay period for any change to pay, but for a change in classification two or more pay periods, advanced notice is best.

→ WHAT SHOULD BE DOCUMENTED?

Assuming your state does not have specific documentation requirements, we recommend clearly documenting these changes for the employee's personnel file. A useful tool for this is the Employee Status Change Form located in the Documents section of the Support Center. All details for the classification change should be documented, including new FLSA classification as non-exempt, type of pay received (e.g., hourly, salary, piece rate), and the effective date of the change. This document should be signed by the employee, their manager, and the human resources representative, and then stored in the employee's personnel file. If the company makes changes to non-exempt employment policies as discussed above, updated policies should be distributed and acknowledged by each employee, and the acknowledgment form should be maintained in their personnel file.

STEP 3

CONSIDER THE COMPANY'S POLICIES & PRACTICES

Set aside time to train your supervisors and managers to ensure that new and updated company policies and practices are accurately communicated, understood, followed, and enforced. Additionally, managers and supervisors must understand the company's overtime practices and the budget implications of reclassifying employees.

For example, if overtime should be avoided entirely, managers may need to adjust their scheduling to accommodate for this. Managers also may need to examine their staffing models to ensure adequate staffing for service or product output.

Employees must be trained so that they are aware of each policy and how it affects them and their work each day. Employees must also understand that once they are trained and acknowledge the policies, failure to comply will result in discipline.

Both managers and employees must be aware of what constitutes compensable time, as this is likely a sizable adjustment. For example, travel time and time spent checking emails at night must be compensated. Employees will need to know how to report this time, and managers will need to know how to schedule accordingly.

When training employees on the relevant policies and practices, it may be worth a few minutes of your time to discuss that the driving force behind these changes is the FLSA, not your opinion of the reclassified employees. For better or worse, being exempt (or salaried) has been a status symbol in the American workplace. Given the potential for bruised egos, it's important to communicate that this change isn't a result of the employee's performance, dedication to the company, or contribution – it's simply a result of changes to federal law that the company must comply with.

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NOTE

Time, energy, and money dedicated to training will be well spent. Proactive training on compliance – prior to the rule’s effective date and in the following six months to a year – will cost a small fraction of the price of defending wage and hour claims.

STEP 4

MONITOR AND REVISE COMPANY BUDGETS

Once you’ve decided how to deal with affected employees, you should be able to analyze company budgets to determine the impact. Depending on the scale of the changes your organization needs to make, continuous monitoring of budgets may be necessary for the first six months to a year after you implement changes.

FAQs

→ WHAT ARE THE NEW MINIMUM LEVELS?

As of January 1, 2020, exempt executive, administrative, computer, and (most) professional employees need to be paid **at least $35,568 per year or $684 per week.**

As of January 1, employees who are exempt under the Highly Compensated Employee (HCE) exemption will need to be paid **at least $107,432 per year.** The HCE exemption *may* be used when an employee performs just one or more duties of an executive, administrative, or professional employee. They do not, however, have to meet all elements of any given duties test.

→ WHEN SHOULD I CHANGE AN EMPLOYEE’S STATUS TO NON-EXEMPT?

We recommend notifying employees of their classification change at least 30 days before their pay is impacted, and we recommend an effective date for the change no later than the start of the pay period that includes January 1, 2020. This will prevent a mid-pay period classification change. Issuing pay to an employee for one pay period that includes classification as both exempt and non-exempt is complicated, and your payroll specialist will thank you for using a pay period start date for ease of transition.

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→ IS ISSUING COMMISSIONS, NON-DISCRETIONARY BONUSES, OR OTHER PAY TO NON-EXEMPT EMPLOYEES DIFFERENT?

Yes, and it's definitely more complicated than it is for exempt employees.

The FLSA requires that overtime is calculated weekly based on the employee's "regular rate of pay." However, although they may not seem "regular," commissions, non-discretionary bonuses and other non-hourly pay must be included in the "regular rate of pay" calculation. For weeks in which a non-exempt employee earns both overtime and incentive pay – whether provided at the time or retroactively – the company must calculate (or recalculate) the employee's regular rate of pay so that it includes both their base pay and incentive pay for the week, then utilize the new amount for overtime calculations.

Here's an example of this calculation, courtesy of the Department of Labor:
An employee paid biweekly at a rate of $12 per hour plus a $100 attendance bonus, working a schedule of 56 hours per week as shown in the chart below, would be due overtime pay as follows:

WEEK 1	SUN	MON	TUES	WED	THURS	FRI	SAT
Hours Worked	8	8	8	8	8	8	8

WEEK 2	SUN	MON	TUES	WED	THURS	FRI	SAT
Hours Worked	8	8	8	8	8	8	8

$100 (bi-weekly attendance bonus) ÷ 2	= $ 50 (weekly bonus equivalent)
56 hours worked x $12/hour + $50 (weekly bonus equivalent)	= $722 (total ST compensation)
$722 (total ST compensation) ÷ 56 hours worked	= $ 12.89 (regular rate)
$12.89 (regular rate) x ½	= $ 6.45 (half-time premium)
$12.89 (regular rate) + $6.45 (half-time premium)	= $ 19.34 (overtime rate)
40 (straight time hours) x $12.89 (regular rate)	= $515.60 (straight time earnings)
16 (overtime hours) x $19.34 (overtime rate)	= $309.44 (overtime earnings)
TOTAL EARNINGS FOR WEEK ONE	**$825.04**
TOTAL EARNINGS FOR WEEK TWO	**$825.04**
TOTAL EARNINGS FOR BI-WEEKLY PERIOD	**$1,650.08**

→ WHAT'S THE DIFFERENCE BETWEEN A NON-DISCRETIONARY AND DISCRETIONARY BONUS?

Essentially, non-discretionary bonuses are goal-based and guaranteed if goals are met. Discretionary bonuses are at the employer's whim and cannot be expected.

The FLSA defines non-discretionary bonuses as those that are announced to employees to encourage them to work more steadily, rapidly or efficiently, and bonuses designed to encourage employees to remain with an organization. If there is an established set criteria an employee has to meet, and the bonus is guaranteed to be earned once those criteria are met, that will be considered a non-discretionary

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bonus. All non-discretionary bonuses must be included in the regular rate of pay, as outlined above, and will impact the overtime rate when they are issued in the same workweek in which overtime is earned.

Not many bonuses qualify as discretionary under the FLSA, though those that do allow exclusion from the regular rate of pay and overtime calculations. A discretionary bonus provided to an employee is just that: something an employer is not obligated to provide and can give to any employee for any reason or no reason at all. Generally, they're given out of appreciation, loyalty, or good service. Employees do not expect them.

→ WILL NON-DISCRETIONARY BONUSES AND COMMISSIONS COUNT TOWARDS THE MINIMUM SALARY THRESHOLD?

Up to 10% of the minimum salary threshold – $3,557 – may come from non-discretionary bonuses, commissions, or other incentive pay for executive, administrative, computer, and professional employees. These payments must be made on at least an annual basis, and if the employee does not earn enough of this incentive pay to reach the exempt salary threshold, the employer must pay the difference in order to keep the employee's exemption intact; the DOL is calling these "catch-up payments."

HCE employees may earn most of their income through incentive pay, but must receive at least $684 per week on salary or fee basis; this amount may not be subject to a reduction of 10% for future incentive pay.

Note that those exempt under the Outside Sales Employee exemption (which is narrow) are not subject to the minimum salary requirement.

→ CAN I CLASSIFY AN EMPLOYEE AS SALARIED NON-EXEMPT?

Yes. However, this hybrid salaried/non-exempt pay classification can present challenges.

The idea behind paying employees this way is that for weeks where they work 40 hours or fewer, you can essentially hit the "regular weekly pay" button and be done with it. Unfortunately, this has a tendency to make both the employer and employees lackadaisical about timekeeping. But this pay classification still requires strict timekeeping, just as for all non-exempt employees, in order to determine overtime eligibility. This includes timekeeping entries for when work begins and ends as well as compliance with the state's meal and/or rest period requirements, if applicable. In the event that hours are not tracked properly and there is a dispute, the burden of proof will be on the employer to substantiate that pay was accurate for hours worked, and this will likely be very challenging.

→ CAN PART-TIME EXEMPT EMPLOYEES REMAIN PART-TIME?

Yes, but they will still have to make $684 per week, every week.

Regardless of whether an employee is full or part-time, they must meet each of the criteria for an exempt classification under the FLSA. Therefore, so long as the pay

meets the minimum salary threshold, they are paid on a salary basis, and they meet the duties test, they may be classified as exempt. Failure to meet the minimum salary amount, or any of the other criteria for an exempt classification, will result in a non-exempt classification determination.

→ DOES THIS CHANGE EVEN APPLY TO ME?

Almost certainly.

There are two ways in which employees can be covered by the FLSA. The first is called "enterprise coverage." This applies when an employee works for an employer who has an annual dollar volume of cash sales or business done of $500,000 or more. It also applies if the employer is a hospital, business providing medical or nursing care for residents, school or preschool, or government agency.

The second type of cover is called "individual coverage." Even when there is no enterprise coverage, the FLSA will cover individuals engaged in interstate commerce. If an employee makes goods that will be shipped out of state, places telephone calls to another state, sends or receives out-of-state shipments, or partakes in any number of other basic business activities, they will qualify for individual coverage.

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FLSA RECLASSIFICATION LETTER

[Date]
[Name]
[Street Address]
[City, State ZIP]

Dear [Employee Name],

This letter is to inform you that your position has been reclassified as non-exempt. This change will be effective [enter date], at which time you will be paid [per hour, salary non-exempt, per piece rate]. Details on the reason for this change along with steps for the future are provided below, but please feel free to visit with your manager or [HR representative's name] with any questions. We are here to answer questions and will provide as much information as possible.

We'd like to provide you with some background on changes to the law that has affected your employee classification. The federal Fair Labor Standards Act (FLSA) and state laws govern position classifications as exempt or non-exempt from minimum wage and overtime, and these laws apply to all positions. Positions that are exempt from overtime must meet very specific criteria, such as paying a minimum salary amount, paying on a salary basis, and passing a specific job duties test. Positions that do not meet these criteria are called non-exempt, and the laws require that non-exempt positions are paid minimum wage and overtime.

Prior to recent federal law changes, employees who were classified as exempt had to make at least $455 per week. However, on September 24, the Department of Labor announced that the new minimum salary threshold will be $684 per week, or $35,568 per year. This rule takes effect on January 1, 2020.

[Company] has reviewed your position with these legal rule changes in mind and has elected to reclassify the position as non-exempt.

As a non-exempt employee, you will be asked to track and record all hours worked, and you will receive overtime if you work more than 40 hours in a workweek. For your reference, our company workweek begins and ends at 12:00am on [day, e.g. Sunday] each week.

There are several company policies and practices that are important to be aware of with regards to your new classification, and we will hold a company training on [date] at [time]. [Alternative: There are several company policies and practices that are important to be aware of with regards to your new classification. Your manager/supervisor will share these with you, and [HR representative's name] is available to answer any questions. Alternative: There are several company policies and practices that are important to be aware of with regards to your new classification; they are attached to this letter, along with an acknowledgment form. Your manager will set aside time for you to review these policies and ask questions.]

You play a key role with [Company] and we assure you that this is not a demotion and has nothing to do with your value to [Company]. We value your contribution and hard work for our team! This change is being driven by the updated FLSA rules and has nothing to do with your performance or contributions to the company. Your job title and job duties will not change.

[Optional, and suggested if true: Steps have been taken to ensure that this change to non-exempt does not result in a decrease in your compensation. In fact, if you work 40 hours per week, your compensation should remain the same. Additionally, because you are now eligible for overtime, your compensation may actually increase if you work more that 40 hours. However, please not that all company overtime must be approved ahead of time by a manager or supervisor.]

If you have questions concerning this action or need further clarification about your classification, please reach out to me or your manager.

Sincerely,

[Signature]
[Name and Position Title]

[Orange text denotes a field that needs to be changed by the user.]

TIME TRACKING MEMO to EMPLOYEES

This correspondence is intended to notify you that we will be tracking employee time for the next [two months, six weeks, 30-days], beginning on [date to start tracking]. This tracking is necessitated by the recent rule changes to what are commonly known as the White Collar Exemptions under the Fair Labor Standards Act (FLSA). the new rule states that for an employee to be exempt from overtime, they must make at least $35,568 per year. Previously, the threshold to be classified as exempt was $23,660.

We must comply by reclassifying or changing the pay structure of affected employees by January 1st, 2020. In order to assist with our decision-making process, we have decided to track employee time; this will help us determine what impact, if any, paying additional overtime will have on our budget. This information will not be used to make any improper deductions, and exempt employees will continue to be paid on a salary basis, under the same pay structure, until further notice. Changes to employee classifications or pay structures will likely take place during the last full pay period prior to the effective date of the new rules, although [Company] reserves the right to make changes before or after that time. Additional information will be provided to those affected prior to the change.

Please [describe timekeeping system, who (if anyone) time should be turned in to, when it should be turned in, and any additional guidance]. If there are any unique situations during this period that cause you to work many more or many fewer hours than you would over the course of a typical [two-month, six-week, 30-day] period, please alert your manager or supervisor so those entries can be taken into account.

We appreciate your involvement in accurately tracking all time worked during this period. Please do not hesitate to reach out to your manager or supervisor if you have any questions.

PART THREE

FEDERAL FLSA WHITE COLLAR EXEMPTION GUIDE

The Fair Labor Standards Act (FLSA) establishes requirements for minimum wage and overtime pay. It also imposes various restrictions on record keeping and the employment of minors. The FLSA affects most public and private employers and is enforced by the Wage and Hour Division of the Department of Labor (DOL).

What does it mean to be exempt?

An exempt employee is one who is not subject to the minimum wage and/or overtime provisions of the FLSA. This means that the employer does not have to pay the employee a premium for hours worked over 40 in a week. However, it also means that the employee's wages may not be reduced when fewer hours than normal are worked, except in limited circumstances. There are a variety of positions that are exempt from the minimum wage and overtime provisions of the FLSA; this guide deals only with what are called the White Collar Exemptions.

When determining if an employee is exempt, there are several factors to consider. It is not enough to look at a job title or job description to decide whether an employee is exempt—you must look at the actual duties performed by the employee, plus how the employee is paid and how much the employee is paid.

Interaction With State Laws

State laws can also impact how an employee may be classified. Employers should proceed with care as there are some differences between the applicable state laws and the FLSA. Some exempt roles may not exist under state law or it might be much more difficult to properly classify an employee as exempt.

> *"When determining if an employee is exempt, there are several factors to consider ... you must look at the actual duties performed by the employee, plus how the employee is paid and how much the employee is paid."*

Some states also have a higher minimum salary than required by the FLSA. California, for instance, requires that employees make at least twice the state minimum wage to qualify as exempt. Check with an HR Professional or employment attorney to see if your state has any unique regulations.

Definitions

Primary Duty: Primary duty means the main or most important duty that the employee performs. Determination of an employee's primary duty must be based on the character of the employee's job as a whole. Factors to consider include the relative importance of the exempt duties as compared with other types of duties, the amount of time spent performing exempt work, the employee's relative freedom from direct supervision, and the difference between the employee's salary and the wages paid to other employees for the kind of non-exempt work also performed by the employee (e.g., if a shift supervisor only makes 50 cents more per hour than the workers they supervise, their supervisory duties are probably not "primary" enough to qualify them for an exemption).

Salary Basis: Being paid on a salary basis means an employee regularly receives a predetermined amount of compensation each pay period. The predetermined amount cannot be reduced because of the quality or quantity of the employee's work. So whether the employee works 48 hours or 32, or whether they accomplish 10 things or three things, they should be paid the same amount.

RESOURCES

From the DEPARTMENT of LABOR WAGE and HOUR DIVISION

Fair Labor Standards Act Advisor*

Click here for an interactive guide providing information to help employers understand Federal minimum wage, overtime, child labor and record-keeping requirements.

Exemption Fact Sheets*

Click the links below to view helpful fact sheets explaining each of the six White Collar Exemptions.

- EXECUTIVE
- ADMINISTRATIVE
- PROFESSIONAL
- COMPUTER EMPLOYEE
- OUTSIDE SALES
- HIGHLY COMPENSATED

** These links can also be found on the last page of this document.*

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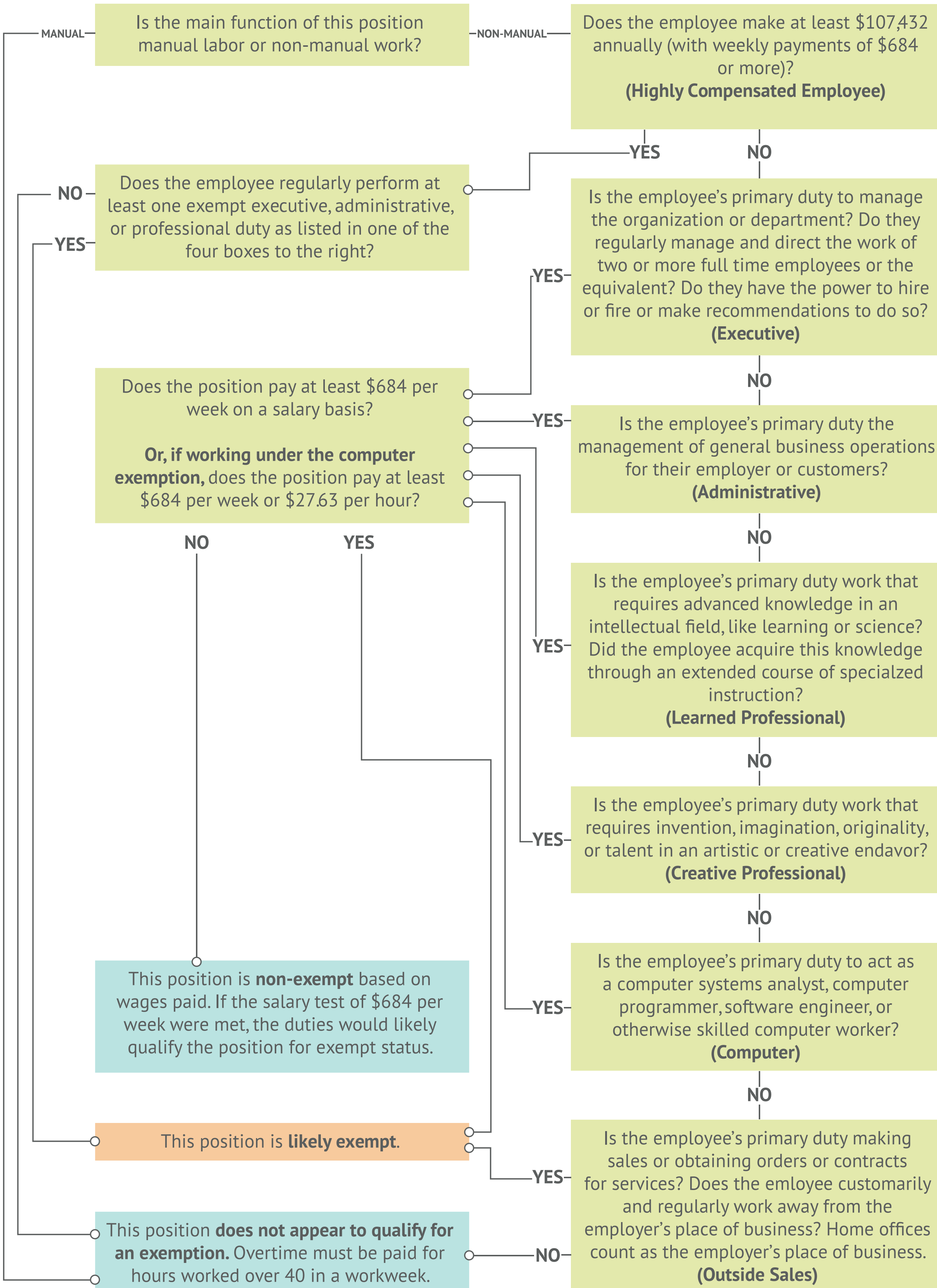
WILL MY EMPLOYEE be EXEMPT from the FLSA in 2020?

To say "yes," you must answer yes to all questions in the box.



NOTE: The current minimum salary level is **$455** per week but this will increase to **$684** on January 1, 2020.

FOR FURTHER REFERENCE

INTERACTIVE GUIDE
www.dol.gov/whd/regs/compliance/Digital_Reference_Guide_FLSA.pdf

HIGHLY COMPENSATED
www.dol.gov/whd/overtime/fs17b_executive.htm

HIGHLY COMPENSATED
www.dol.gov/whd/overtime/fs17c_administrative.htm

HIGHLY COMPENSATED
www.dol.gov/whd/overtime/fs17d_professional.htm

HIGHLY COMPENSATED
www.dol.gov/whd/overtime/fs17e_computer.htm

HIGHLY COMPENSATED
www.dol.gov/whd/overtime/fs17f_outsidesales.htm

Are you ready for a better way to track time?

platinum-grp.com/services

We hope you found this to be a helpful guide.

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