

## Detailed Overview of the Department of Labor's New Final Rule, and its Changes to the White Collar Employee Overtime Exemption Requirements

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As explained in Nardone Limited's previous [blog](#) on this topic, on Wednesday, May 18, 2016, the United States [Department of Labor](#) ("DOL") through the DOL's [Wage and hour Division](#) ("WHD") published its [Final Rule](#) (the "Final Rule") updating the U.S. employee overtime regulations under the Federal [Fair Labor Standards Act](#) (the "FLSA"). As the Nardone Limited Employment Blog has [previously detailed](#), FLSA contains the statutory regulations that mandate employee overtime pay and sets the parameters for when overtime wages must be paid. As promised in Nardone Limited's prior [blog](#) post, this article serves to provide a detailed explanation of the DOL's new Final Rule and its official changes to the WHD rules governing employee overtime eligibility.

The primary revision enacted by the new Final Rule's changes to the FLSA regulations is that it will raise the minimum salary level required to allow employee eligibility for the DOL executive, administrative and professional employee overtime exemptions (frequently referred to as the "**White Collar exemptions**"). The new regulations require that employees classified under the White Collar DOL overtime exemptions must be paid \$913 per week (\$47,476 annual) to be eligible for those category exemptions from overtime pay. The new threshold wage requirement will become effective on December 1, 2016.

As we have advised in our [prior blog post](#), the Final Rule's change to the White Collar exemption will have a very broad effect. The estimated scope of effected workers is detailed in the table below from the DOL website:<sup>1</sup>

	Currently overtime exempt*	Gain new overtime protections or get a raise to the new threshold	Share of currently overtime exempt workers who gain new overtime protections or get a raise to the new threshold
<b>TOTAL</b>	<b>22,514,000</b>	<b>4,228,000</b>	<b>19%</b>
<b>GENDER</b>			
Female	9,089,000	2,352,000	26%
Male	13,425,000	1,876,000	14%
<b>EDUCATION</b>			
Less than a college degree	6,487,000	1,976,000	30%
Less than high school	148,000	69,000	47%
High school degree	2,148,000	696,000	32%
Some college or an associate degree	4,191,000	1,211,000	29%
Bachelor's degree or more	16,027,000	2,252,000	14%
Bachelor's degree	10,481,000	1,659,000	16%
Advanced degree	5,546,000	593,000	11%
<b>AGE</b>			
Under 35	5,653,000	1,640,000	29%
Under 25	626,000	314,000	50%
25-34	5,027,000	1,326,000	26%
35 and over	16,862,000	2,589,000	15%
35-54	12,014,000	1,846,000	15%
55 and over	4,848,000	743,000	15%
<b>RACE &amp; HISPANIC ORIGIN</b>			
Hispanic, any race	1,683,000	474,000	28%
Black, non-Hispanic	1,472,000	410,000	28%
White, non-Hispanic	16,891,000	2,983,000	18%
Asian, non-Hispanic	2,084,000	279,000	13%
Other**	384,000	81,000	21%
<b>FAMILY AND CHILDREN</b>			
Not a parent of a minor child	13,584,000	2,776,000	20%
Parent of one or more minor children	8,931,000	1,451,000	16%
Children with at least one affected parent		2,492,000	

The Final Rule's new threshold employee pay requirement governing DOL overtime exemptions is a significant increase that more than doubles the current minimum salary level of \$455 per week, which amounts to \$23,660 annually. This means that employees whose compensation does not comply with the new salary requirements when the Final Rule's regulations become effective will no longer qualify for the White Collar DOL

<sup>1</sup>Chart provided on the Department of Labor website to explain the scope and demographic breakdown of the new regulations. Available at: <https://blog.dol.gov/2016/05/18/who-benefits-from-the-new-overtime-rule/> [Last accessed June 23, 2016].

overtime exemptions. As a result, any employees who no longer qualify will need to be paid overtime compensation when they work more than 40 hours in a workweek.

To take a step back and ensure that there is no confusion, the existing DOL overtime regulations generally provide three criteria to determine eligibility for the White Collar exemptions. These requirements are as follows:

1. The employee must be paid on a salary basis not subject to reduction based on quality or quantity of work;
2. The employee's salary must meet a minimum salary level, which after the effective date of the Final Rule will now be \$913 per week, amounting to \$47,476 annually for a full-year worker;
3. The employee's primary job duty must comprise the type of work associated with exempt executive, administrative, or professional employees.

To be clear, the threshold salary under the Final Rule is not the sole criterion that determines eligibility for the White Collar overtime exemption, and it also does not represent a minimum wage requirement. Rather, the increased threshold enacted by the new Final Rule simply increases the required salary threshold under prong two above, which is sometimes known as the "salary basis test."

In addition to the primary effect described above, the new Final Rule also includes a number of other key provisions. For example, the Final Rule indicates that, moving forward, the threshold salary level will be modified every three years based on the 40th percentile of the lowest U.S. wage region calculated from the most recent U.S. census. This aspect of the new Final Rule makes clear that employers will need to remain mindful of potential fluctuations to the exempt employee wage threshold in planning their business's long-term growth strategies. But, the first update to the salary level under that provision will not occur until January 1, 2020. And, all updated rates will be published on the [DOL website](#) at least 150 days before their effective date.

Further, on a positive note, an additional aspect of the new Final Rule allows employers flexibility in establishing that their compensation to employees meets the threshold amount for the White Collar exemption. Specifically, the Final Rule states that employers may use qualifying nondiscretionary bonuses and incentive payments, including commissions, to satisfy up to ten percent of the threshold salary requirement. But, this aspect of the Final Rule includes the caveat that these non-traditional compensation amounts must be paid on at least a quarterly basis to qualify for consideration as part of the threshold salary level.

Unfortunately, however, the Final Rule's regulations do not make exceptions for non-profit entities or small businesses, upon which compliance with the new regulations will pose a disproportionately greater hardship. But, to help inform employers about compliance, the DOL has issued [technical guidance](#) to private employers to assist with compliance with the new rule.

Moving forward, there are a number of approaches through which employers may ensure compliance with the new Final Rule's changes to the White Collar overtime exemption rules, including: raising salaries, simply paying overtime above the salary amount rather than raising salaries because of its limited effect on your particular business, reorganizing workloads and adjusting schedules to spread work hours among employees, and adjusting wages to reallocate pay between regular wages and overtime, to effect an aggregate amount paid to employees that remains virtually equal.

The employment attorneys at [Nardone Limited](#) are experienced in advising clients on FLSA compliance and litigation. Please contact the employment attorneys at Nardone Limited to ensure that your business is ready for the changes ahead and prepared for compliance with the new DOL regulations.