

Mass Workforce Issuance

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☐ Policy ☒ Information

To: Chief Elected Officials
Workforce Board Chairs
Workforce Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DCS Operations Managers

cc: WIOA State Partners

From: Alice Sweeney, Director
Department of Career Services

Date: June 22, 2016

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

Purpose: To notify Local Workforce Boards, One-Stop Career Center Operators and other local workforce partners of the Department of Labor (DOL), Employment and Training Administration (ETA) Training and Employment Notice ([TEN](#)) No. 36-15, *Department of Labor Wage & Hour Division (WHD) Overtime Final Rule*, released May 23, 2016 announcing 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](#) (FLSA).

Background: 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 FLSA'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 DOL'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.

The final rule will strengthen overtime protections for salaried workers already entitled to overtime and provide greater clarity for workers and employers. 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.

Action

Requested: Please share with managers, staff and partners as appropriate.

Effective: The rule takes effect on December 1, 2016

Resources:

1. [Overview and Summary of Final Rule](#)
2. [WHD Fact Sheet](#)
3. [Guidance for General Private Sector Employers](#)
4. [Guidance for Non-Profit Organizations](#)
5. [Guidance for Higher Education Institutions](#)
6. [Fact Sheet: Overtime Final Rule and State/Local Governments](#)
7. [Fact Sheet 17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act](#)
8. [Small Entity Compliance Guide to the FLSA's](#)