




HR Update Webinar

- Overtime rule change
- Tipped employees
- Website accessibility update

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What We Will Cover Today

- ◆ What are the changes imposed by the 2019 Final Rule?
- ◆ When are the changes effective, i.e. how long do employers have to comply?
- ◆ Are any efforts being made to block the changes?
- ◆ What options do employers have to ensure compliance with the Final Rule?

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Overview of FLSA

WAGE BILL PASSED BY HOUSE, SENATE

Measure Provides Minimum Pay and Maximum Work Week for Labor

By LOUIS STARK
 Special to THE NEW YORK TIMES.

WASHINGTON, June 14. — The Senate and House today approved the Wage and Hours Bill as reported by the Joint Conference Committee and the measure will go to President Roosevelt for his signature in a few days. The House vote was 290 to 89. No record vote was taken in the Senate.

Lauded by its proponents as a great humanitarian measure and by its opponents as opening the door "to an industrial dictator," the enactment of the conference report concluded a two-year fight for a minimum-wage and maximum-hour law.

EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

FEDERAL MINIMUM WAGE

\$7.25 PER HOUR

STARTING JULY 15, 2009

The law holds an employer liable for paying the greater amount employees are entitled to.

CRIMINAL PENALTY — Knowingly failing to pay the minimum wage or overtime pay is a criminal offense.


CHALLENGES — The law has been challenged in court several times. The Supreme Court has ruled in favor of the law.

TIP CREDIT — Employers can use tips to offset the minimum wage, but only if the employee receives more than the minimum wage.

MINIMUM WAGES — The law sets a minimum wage for most employees. There are exceptions for certain types of workers.

ENFORCEMENT — The Department of Labor is responsible for enforcing the law.

ADDITIONAL INFORMATION — For more information, visit the EEOC website.



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White Collar Exemptions

- ◆ Salary basis test:
 - Employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed.
- ◆ Salary level test:
 - The amount of salary paid must meet a minimum specified in the regulations.
- ◆ Duties test:
 - Primary duties must involve executive, administrative, or professional duties, as defined in regulations.

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The Winding Path of the DOL's Overtime Rule

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Overtime, Over-Time.

Final Rule Published in Federal Register	Preliminary Injunction Issued	Final Rule Held Invalid	NEW Proposed Rule	DOL Issues Final Rule	Effective Date
May 23, 2016	November 23, 2016	August 31, 2017	March, 2019	September 24, 2019	January 2020

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Change #1: Standard Salary Level Increase

\$35,568
(\$684 per week)

~~**\$23,660**~~
(\$455 per week)

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Change #2: Highly Compensated Employee (HCE) Salary Level Increase

\$107,432
(\$2,066 per week)

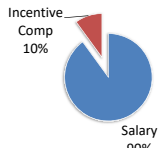
~~**\$100,000**~~
(\$1923.08 per week)

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Change #3: Employers Permitted to Use Incentive Compensation To Partially Meet Salary Level Requirement

Salary + Incentive Comp = \$35,568



Incentive Compensation:

- Commissions
- **Non**-discretionary Bonuses
- Other Incentive Payments

Incentive Compensation Limit: 10% (\$3,556.80)

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Use of Incentive Compensation to Satisfy Salary Level


- ◆ 10% catch-up may be paid on an annual basis or more frequently (Obama rule required such payments at least quarterly)
- ◆ A single catch-up payment may be made to satisfy the salary level test within one pay period of the applicable 52-week period (e.g. the first pay period in January for employers on a calendar-year basis)
- ◆ 10% Rule does not apply to HCEs
 - HCEs must be paid at least the full *standard* salary level (at least \$684/wk.) without regard to incentive compensation.

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Change #4 (from Obama rule): No Automatic Increases to the Salary Levels


- ◆ DOL states its intention to update the salary levels on a “regular basis” using “notice and comment” procedures (i.e. issuing NPRMs)
 - DOL dropped initial proposal to undergo such updates at least every 4 years
 - Obama rule would have included automatic increases every three years



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When Is the Final Rule Effective?



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Duties Test

No Changes to Duties Test

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Things to Note



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Will the Rule be Challenged/Overtaken (Like the Last Time)?

- New salary level increases are considerably more modest and therefore will have a less dramatic impact on the business community
- Many employers already made changes to their pay structures in anticipation of compliance with the Obama rule in 2016
- Any legislative challenge by the Democratically-controlled House almost certainly would be rebuffed by the Republican-controlled Senate
- As part of the Final Rule, the DOL has formally rescinded the Obama-era regulation so, if the Final Rule is overturned, the 2004 salary levels will continue to apply (contrary to the interest of pro-employee groups)

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Strategy

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Strategies for Responding to Changes

- ◆ **Option 1:** Increase salary level for affected employees and retain exempt status (assuming employees satisfy duties test).

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Change Considerations

- ◆ Will employers just absorb the additional cost?
Alternatives:
 - Reduce variable compensation
 - Reduce fringe benefits
 - Reduce pay and/or provide slower and smaller wage increases for non-exempt employees
 - Delay promotions
- ◆ May impact other exempt employees above the salary level; global adjustment?

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Strategies for Responding to Changes



- ◆ **Option 2:** Reclassify as non-exempt and overtime-eligible, and pay overtime.
- ◆ **Option 2.1:** Reclassify as non-exempt and adjust hourly rate to account for anticipated overtime so reclassification is cost-neutral.

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Strategies for Responding to Changes

- ◆ **Option 3:** Reduce hours to avoid overtime and shift work to other workers
- ◆ **Option 4:** Hire more part-time workers



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Challenges in Responding to Changes

- ◆ Recording time
- ◆ Loss of flexibility
- ◆ Loss of steady income
- ◆ Employee morale
- ◆ Overtime estimates not reliable
- ◆ Potential for increase in costs
- ◆ May require hiring of more workers

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With Each Challenge Comes an Opportunity...

- ◆ It's an excellent time to conduct a wage and hour audit, including a review of the duties for each exempt position.



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Questions

- ◆ Due to differences in salary levels, the Final Rule might result in some employees who hold the same job title being treated differently, i.e. one as exempt and one as non-exempt. Is that okay?

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Questions

- ◆ What is the best way to communicate the decision to employees who are being reclassified as non-exempt?

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Tip Pooling/Tip Credit

- ◆ Proposed Rule Change
- ◆ Status
- ◆ Impact
- ◆ Strategy

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Website Accessibility Requirements

1. What is it?
2. Who does it apply to?
3. Why do I care?
Domino's Case
4. Compliance Strategy.

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Today's Presenters

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Thank You

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