



NATIONAL HEAD START ASSOCIATION

The Fair Labor Standards Act (FLSA): Implementing the “Overtime” Rule

Final Rule

On May 18, 2016, the Department of Labor issued a Final Rule, the “Overtime” Rule. The Final Rule focuses on distinguishing overtime-eligible employees from those who are exempt. Exempt employees are not eligible for overtime pay.

Preparing for Implementation

All programs must be in compliance with the Final Rule by December 1, 2016. Approach the below list as suggestions to consider, but remember that each state and each program will have its own unique circumstances. All final decisions should be made in consultation with an attorney.

- **Update** job descriptions to match actual duties as needed.
- **Review** timekeeping procedures, especially with those who are reclassified, as well as managers. Be sure to consider “working lunch breaks,” conferences, and parent-teacher time.
- **Examine** job descriptions and duties. Based on duties performed and whether the program qualifies as educational establishment, can teachers qualify as exempt?
 - Hourly employees and employees who fail the duties test (meaning that they are not eligible for white collar overtime exemption) should be receiving overtime pay and, therefore, will not be affected by the Final Rule.
 - Employees who work fewer than 40 hours per week will not be affected.
- **Identify** all employees who are currently classified as exempt but whose salaries are below \$47,476 per year or \$913 per week.
 - Two options: Reclassify as non-exempt and pay for overtime or increase to meet salary level test (\$913, \$47,476)
 - 10% of a standard salary can be satisfied through non-discretionary means.
For example: employers could pay \$821.70/week, so long as salary and non-discretionary means equal or exceed \$11,869 each quarter.
- **Communicate** with employees who will be affected.
- **Check** state regulations to be sure to give employees adequate notice about changes in pay.
- **Calculate** the costs of overtime for nonexempt employees by using one of the following formulas:
 1. $(\text{Weekly salary}/40) \times 1.5 \times \text{overtime hours} = \text{overtime pay per week}$
Weekly salary remains the same, and overtime is paid in addition.
For example: an employee earns \$800 per week and works 50 hours per week
At current rate, \$300 of overtime pay will be earned each week.
 $\$800/40 = \$20 \times 1.5 \times 10 = \300 in overtime pay
 2. $\text{Weekly salary}/[40 + (\text{estimated overtime hours} \times 1.5)] = \text{new hourly rate}$
Weekly salary is lowered, and overtime is paid. An employer does not need to maintain current hourly rate. A lower hourly rate with well-estimated overtime hours can be cost neutral.
For example: an employee earns \$800 per week and works 50 hours per week
A lower hourly rate with well-estimated overtime hours can be cost neutral.
 $\$800/[40 + (10 \times 1.5)] = 800/55 = \$14.55 = \text{new hourly}$
 $\$14.55 \times 40 = \582.00 (standard pay)
 $\$14.55 \times 1.5 \times 10 = \218.25 (overtime pay)