

PREPARE FOR THE PROPOSED FLSA OVERTIME RULE CHECKLIST

An employer can use this checklist to prepare for the proposed Fair Labor Standards Act (FLSA) overtime rule. Employers should complete the following steps in sequential order.

1. Identify Affected Employees

- Gather payroll records and relevant accounting records.
- Review payroll and accounting records to identify all exempt employees who currently are paid a salary of less than the proposed minimum salary (which is projected to be somewhere between \$1,059 per week and \$1,158 per week).
- Review payroll and accounting records to identify all highly compensated employees (HCEs) earning less than the proposed minimum total compensation (which is projected to be at least \$143,988 per year).
- Prepare a list of all employees identified as affected by the FLSA minimum compensation levels.

2. Audit Affected Employees

- Gather job descriptions, training materials and any other documentation that indicates hours worked and duties performed by the identified employees.
- Begin tracking the hours worked by the identified employees.
- Obtain information from the identified employees and their supervisors about the hours typically worked and the duties performed by the identified employees.
- Determine hours worked by identified employees.
- Determine job duties of identified employees.

3. Develop New Compensation Plans for Affected Employees

- Use data compiled regarding employee compensation, hours worked, and duties performed to determine whether to reclassify employees as nonexempt or increase salaries to retain the exemption.
- Evaluate the various options for developing new compensations plans, including:
 - Maintain the exemption by providing employees with an increase in salary and/or qualifying nondiscretionary bonuses, incentive payments, or commissions.
 - Continue to pay the employees their current salary but reclassify them as nonexempt and then reduce or eliminate overtime hours by adjusting their schedules, limiting hours worked, redistributing workloads, hiring additional full-time or part-time employees and/or restructuring positions.
 - Continue to pay the employees their current salary but pay overtime for hours worked over 40.
 - Reduce the amount of pay allocated to the employees' base salary (provided they still earn at least the applicable hourly minimum wage) and add pay to account for overtime for hours worked over 40 in the workweek, to hold total weekly pay constant.

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- Offset overtime costs by reducing employee benefits, consolidating positions, automating certain job functions, or decreasing the amount of future raises.
- Develop new compensation plans for affected employees based on one or more options.
- Ensure that all new hourly rates comply with the highest applicable minimum wage rate (federal, state, or local).
- Analyze different options to comply with the proposed rule for highly compensated employees (HCEs) earning less than the new total compensation minimum, including:
 - Maintain the exemption by increasing the highly compensated employee's total compensation to the new threshold.
 - Determine whether the highly compensated employee's duties qualify the employee as exempt under the full duties tests for non-highly compensated employees.
 - Consolidate certain highly compensated positions.
- Consider the effect that the new compensation plans will have on labor and administrative costs, as well as employee morale.
- Ensure that all new compensation plans comply with the proposed FLSA overtime rule.
- Make sure that all new compensation plans comply with applicable state and local laws that are more favorable to employees than the FLSA.
- Review newly developed employee compensation plans with legal counsel to ensure compliance with all wage and hour and employment laws.

4. Review Whether Exempt Employees Meet the Applicable Duties Tests

- Gather job descriptions, training materials and any other documentation that indicates the duties performed by exempt employees.
- Obtain information from the exempt employees and their supervisors regarding the duties performed by the exempt employees.
- Determine whether the exempt employees meet the applicable duties tests.
- Assess whether certain workers whose salaries may be above the threshold, but whose actual job duties may not qualify them for an exemption, should be reclassified as nonexempt in the transition.
- Review frequently misclassified positions (such as those in accounting, administration, computer support, etc.) to identify any employees who do not meet the applicable duties tests.
- Reclassify any misclassified workers at the same time as workers not meeting the proposed FLSA overtime rule's salary level threshold.

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5. Prepare Appropriate Timekeeping Systems, Documentation and Policies

- Review wage and hour policies to make sure that they remain accurate in light of the proposed changes to the FLSA regulations.
- Ensure that wage and hour policies and procedures address issues likely to impact formerly exempt employees (e.g., recording and limiting hours worked remotely or accessing company emails after hours).
- Evaluate any existing time systems to determine if they are sufficient for the additional employees who will be required to use them and upgrade if necessary.
- If there are no existing timekeeping systems in place, implement such systems and prepare the documentation needed to comply with the tracking, reporting and recordkeeping requirements for nonexempt employees.

6. Develop a Communication Plan

- Determine who will communicate changes, optimally choosing someone who is:
 - A high-level manager.
 - Familiar with wage and hour issues.
 - Knowledgeable about changes for affected employees; and
 - Clear and diplomatic.
- Begin preparing the workforce for the upcoming changes through a group meeting explaining what is happening, why it is happening, and that there is a possibility they will be affected.
- Educate managers on planned changes.
- Decide whether to conduct individual or group meetings.
- Prepare talking points that include the following:
 - An explanation of why the change is occurring.
 - Any changes in an employee's exemption status, compensation, or position.
 - A newly nonexempt employee's responsibility to track working hours.
 - Any limits on hours worked and overtime.
 - The employer's payroll process.
 - Issues regarding "off-duty" hours, work flexibility and telecommuting.

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- Any new policies, such as "off-duty" use of company devices (e.g., cell phones, email, remote computer system, etc.).
- Details about upcoming training; and
- Reassurance as to perceived changes in status, position, or value to the company.

- Prepare a letter reiterating the information discussed in the meeting.
- Make a follow-up plan for employee questions or issues.

7. Devise Training Plans for Managers and Newly Nonexempt Employees

- Develop a training plan for managers that includes the following subjects:
 - Substance of the proposed FLSA regulations.
 - Wage and hour policies and procedures.
 - Timekeeping and payroll procedures.
 - Issues regarding "off-duty" hours, work flexibility and telecommuting.
 - Any new policies, such as "off-duty" use of company devices (e.g., cell phones, email, remote computer system, etc.).
 - Details on the specific changes affecting the employees they supervise; and
 - Provision of assistance to their direct reports.

- Plan to train managers first.
- Prepare a training plan for affected employees that includes the following:
 - Reiteration of why the changes are occurring.
 - Substance of the proposed FLSA regulations.
 - Wage and hour policies and procedures.
 - Timekeeping and payroll procedures.
 - Issues regarding "off-duty" hours, work flexibility and telecommuting.
 - Any new policies, such as "off-duty" use of company devices (e.g., cell phones, email, remote computer system, etc.); and
 - Handouts of relevant policies, rules, and procedures.