

2024 Overtime Rule Changes: Need to Know for Nonprofits

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What is the FLSA?

The Fair Labor Standards Act
29 U.S.C. §§ 201, et seq.

Three main goals:

- Prohibiting child labor
- Setting a minimum wage
- Requiring the payment of overtime

The FLSA and Nonprofits:

US DOL Fact Sheet #14A

Enterprise Coverage

- Non-profit charitable organizations are not covered under the FLSA unless they engage in ordinary commercial activities that result in sales made or business done, such as operating a gift shop or providing veterinary services for a fee.
- Government agencies, hospitals, and schools/preschools are covered

Individual Coverage

- Individually engaged in interstate commerce or in the production of goods for interstate commerce

Volunteers

- A volunteer generally will not be considered an employee for FLSA purposes if the individual volunteers freely for public service, religious or humanitarian objectives, and without contemplation or receipt of compensation.
- Typically, such volunteers serve on a part-time basis and do not displace regular employed workers or perform work that would otherwise be performed by regular employees.
- Paid employees of a non-profit organization cannot volunteer to provide the same type of services to their non-profit organization that they are employed to provide
- You cannot volunteer for a for-profit organization

Montana Wage Payment Act and Minimum Wage and Overtime

Mont. Code Ann., Title 39, Chapters 3-4

MCA 39-3-406(1) – Exemptions from Minimum Wage & Overtime

- (1)(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis
- (1)(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, a computer systems analyst, computer programmer, software engineer, network administrator, or other similarly skilled computer employee who earns not less than \$27.63 an hour pursuant to 29 CFR 541.400 or 541.402, or an individual employed in an outside sales capacity pursuant to 29 CFR 541.500
 - ARM 24.16.3007 adopts 29 CFR part 541 subparts, A, B, C, D, F, G, and H Oct 27, 2023, edition*

*This points to the \$684/week salary.

Federal Salary Changes

Currently, employees meet the salary basis test if they made \$35,568/year or \$684/week.

Starting spring 2024, this amount will change to \$55,068/year or \$1,059/week.

Options to Consider

Options for exempt employees making less than \$1,059/week

- **Raise salaries, and keep exempt**
 - Business cost would increase \$375/week or \$19,500/year per exempt employee
- **Convert status to nonexempt, pay hourly, and track overtime**

Nonexempt employee works 45 hours/week

- $\$684/40 \text{ hrs} = \$17.10/\text{hour}$ $\$17.10 \div 2 = \8.55 OT Rate = $\$17.10 + \$8.55 = \$25.65$
- 5 hours OT/week $\$17.10 \times 40 \text{ hours} = \684 5 OT hours x $\$25.65 = \128.25
- Weekly wage = $\$684 + \$128.25 = \$812.25$
- Business costs would increase \$128.25/week or \$6,669.00/year per employee

Highly Compensated Employee

USDOL Fact Sheet #17H

A highly compensated employee is deemed exempt under Section 13(a)(1) if:

- 1.The employee's primary duty includes performing **office or non-manual work**; and
- 2.The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Proposed HCE salary - \$143,988

Automatic Updating Mechanism

In each of its part 541 rulemakings since 2004, the Department recognized the need to regularly update the earnings thresholds

A salary level that is not kept up to date becomes obsolete as wages for nonexempt workers increase over time

Long intervals between rulemakings result in eroded earnings thresholds

Results in large increases which are hard for business to adapt to

Proposal is to update salary threshold every three years, with provisions the USDOL can delay a scheduled update where unforeseen economic or other conditions warrant

Exempt v. Nonexempt

There is a two-part test:

1. Salary basis test

2. Job duties test



Salary Basis Test

Salary

- Employee receives a predetermined amount each payday
- Not subject to deductions because of quality or quantity of work

Vacation/Sick Leave/PTO

- May use a leave bank to make the salary whole

Prorated Weekly Salary

- Initial and terminal weeks of employment
- Unpaid FMLA leave

Job Duties Test

Executive

Administrative

Professional

Computer

Outside Sales

**Highly
Compensated**



Executive Exempt Employee

An employee satisfying the Executive job duties test must:

Have a primary duty of managing the enterprise, or a customarily recognized department/subdivision of the enterprise;

Customarily and **regularly direct the work of at least two or more other full-time employees** or their equivalent; and

Have the **authority to hire or fire** other employees, or the employee's suggestions and recommendations as to the hiring/firing/promotion or any other **change of status of other employees, must be given particular weight.**

Administrative Exempt Employee

An employee satisfying the Administrative job duties test must:

Have a **primary duty of office or non-manual work** directly related to the management or general business operations of the employer or the employer's customers; and

That **primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.**

Professional Exempt Employee

An employee satisfying the Professional job duties test must:

Have a **primary duty of the performance of work requiring advanced knowledge**, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;

The advanced knowledge must be in a **field of science or learning**; and

The advanced knowledge must be **customarily acquired by a prolonged course of specialized intellectual instruction.**

Computer Exempt Employee

An employee satisfying the Computer Employee job duties test must be employed as a **computer systems analyst, programmer, software engineer, or other similarly skilled worker** and have a primary duty of:

The **application of systems analysis techniques/procedures**, including consulting with users, to determine hardware, software, or system functional specifications;

The **design/development/analysis/modification of computer systems or programs; and**

The **design/development/analysis/modification of computer programs related to machine operating systems.**



Outside Sales Exempt Employee

An employee satisfying the Outside Sales job duties test must:

Have a **primary duty in making sales** (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

Customarily and regularly be engaged away from the employer's place or places of business.



Proposed Rule Stage

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	09/08/2023	88 FR 62152
NPRM Comment Period End	11/07/2023	
Final Rule	04/00/2024	

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