

FLSA Compliance Kit

An all-inclusive resource guide

- 3 Keys to Managing the FLSA Overtime
- FLSA Decision-Making Guide
- FLSA Implementation Guide



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Introduction

On May 18, 2016, the Obama Administration released the final rule of the Department of Labor's (DOL) updates to the Fair Labor Standards Act (FLSA) overtime provisions. The Final Rule regulations increase the salary threshold needed to qualify for overtime exemption from \$455/week (\$23,600 per year) to (\$913 per week; \$47,476 annually for a full-year worker).

It is estimated that the new overtime rule will affect 7.4 million establishments and cost employers approximately \$592.7 million to become familiar with the regulations.

All employers must comply with the new rule by December 1, 2016. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

3 Keys to Managing the FLSA Overtime Rule Change

3 Keys to Managing the FLSA Overtime Rule Change

1. DETERMINE WHICH EMPLOYEES WILL BE AFFECTED

The first step in this process is to understand which employees will be affected. In order to get a clear picture, employers should start by examining which full-time employees earn less than \$47,476 AND work more than 40 hours per week.

Many may find it helpful to work with their payroll and time and attendance provider to compile reports of employees' actual annual earnings and average weekly hours worked. To ensure the greatest accuracy, these reports should be linked and accessible in one location from one provider.

Position	Department	Dept	Employee Code	Employee Name	Status Code	Hire Date	Date Hired	Number of Weeks	Average Hours/Week	Average Hours/Week	Total Hours Worked
000	000	000	ERJANI	ERJANI, RUANI	A	08/07/2009		4	8.00	40.00	100.00
000 TOTAL											
100	000	100	SILVAYNSU	GRAYNIS, ALEXANDRA	A	08/10/2009		4	5.00	40.00	100.00
100	000	100	MENORANT	INORAL, MICHAEL	A	08/01/2011		4	8.00	40.00	100.00
100	000	100	TMCGRAW	MCGRAW, TONY	A	08/26/2009		4	8.00	40.00	100.00
100 TOTAL											
200	000	200	DOSS	DOSS, JOHN	A	07/09/2012		4	8.00	40.00	100.00
200 TOTAL											
300	100	000	DEGLES	DEGLES, CHARLES	A	08/03/2009		4	8.00	30.00	120.00
100	100	000	ICARREY14	CARREY, JIM	A	08/08/2014		4	8.00	40.00	100.00
100	100	000	FRANVIA	FRANK, DAVIN	A	08/10/2014		2	8.00	40.00	80.00
100	100	000	DEMLIE	DEMLIE, HAILEY	A	08/13/2014		2	8.00	40.00	80.00
100	100	000	GREENS06	GREEN, RAYMOND	A	08/05/2014		4	8.00	40.00	100.00
100	100	000	BERNDAY	BERNDAY, BILLY	A	08/07/2017		4	8.00	40.00	100.00
100	100	000	JONES2	JONES, JIM	A	08/08/2012		4	8.00	43.00	172.00
100	100	000	FRICK7	FRICK, FANNIE	A	08/24/2014		4	8.00	40.00	100.00
100	100	000	CHUBBIN	CHUBBIN, CHRIS	A	11/18/2008		4	8.00	40.00	100.00
100	100	000	SMILEY1	SMILEY, NANCY	A	08/15/2010		4	8.00	40.00	100.00
000 TOTAL											
100	100	100	GALLEN22	GALLEN, GREGG	A	08/01/2013		4	5.00	20.00	100.00
100	100	100	DOUGRA	DOUGRA, DANIEL	A	08/29/2012		4	5.00	22.50	100.00
100	100	100	CHODREAU12	CHODREAU, CHERIE	A	08/01/2010		4	5.00	22.25	101.00
100	100	100	LAIBEL1	LAIBEL, LAURA	A	08/21/2014		4	4.95	24.75	99.00
100	100	100	ICASHS	CASH, JOSEPH	A	08/01/2012		4	8.00	40.00	100.00
100	100	100	ADAVNS17	DAVIS, AELAN	A	08/01/2012		2	8.00	40.00	80.00
100	100	100	DAVNS77	DAVIS, BELLA	A	08/02/2011		2	8.00	40.00	80.00
100	100	100	ONERAY	ONERAY, GREGGORY	A	08/09/2009		4	8.00	40.00	100.00
100 TOTAL											
100	100	300	SMILLOCKS	SMILLOCKS, MORGAN	A	08/05/2010		4	7.75	31.00	100.00
100	100	300	SMITH104	SMITH, WILLIAM	A	11/15/2008		4	8.00	40.00	100.00
300 TOTAL											
100	300	700	MADAMONI	MADAMONI, MICHAEL	A	08/20/2009		4	8.00	40.00	100.00
700 TOTAL											
Grand Total:									392.00	1,762.00	2,554.00
DEMO AMY'S COMPANY											
Average Hours Worked Report											

2. EVALUATE THE MOST COST-EFFECTIVE OPTION

You have limited options to respond to the new overtime rule. According to the DOL, you can:

- a) pay time-and-a-half for overtime work
- b) raise employees' salaries above the threshold
- c) limit employees to 40 hours per week
- d) some combination of the above

Each employee has unique circumstances that determine whether you should begin paying them overtime or raise their salary to meet the minimum threshold amount.

3 Keys to Managing the FLSA Overtime Rule Change

Snapshot of Paying Overtime vs. Increasing an Employee's Salary				
	Current Salary	Hours Worked	Overtime an employee could receive	Amount employer would have to raise income
Tim	\$30,000	48	\$8,653.85	\$17,477
Alice	\$40,000	50	\$14,423.08	\$7,477
Claire	\$45,000	44	\$6,490.38	\$2,477

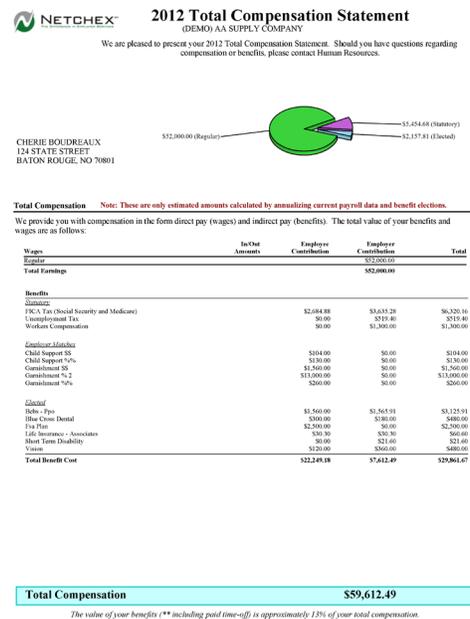
As you can see from the scenario above, it may be more cost-effective for the company to raise Alice and Claire's pay to meet the minimum threshold of \$47,476. However, in Tim's case it may be more cost-effective for the company to pay him overtime wages.

Visit www.netchexonline.com/dol to access our helpful calculator and compare which option works best for your company.

3. COMMUNICATE ALL CHANGES TO EMPLOYEES

It is important to communicate any change in employee pay structure due to the FLSA rule change, especially if the change moves a salaried employee to an hourly pay structure. Some employees may feel that the change is a demotion or a change in status.

One tactic to overcome employee doubts is to utilize a Total Compensation Statement to show employees a clear picture of their actual annual pay, benefits and nondiscretionary bonuses.



FLSA Changes: Decision-Making Guide

Source: NetHRSupport Center Implementation

FLSA Changes: Decision-Making Guide

We recommend that employers decide what course of action they will take for affected employees and begin to plan for how those changes will be implemented. In this guide, we will focus on the four main steps employers need to take in making decisions about what their course of action will be:

- 1. Identifying which exempt employees could be affected**
- 2. Calculating the hours worked by affected exempt employees**
- 3. Considering which compensation strategy is the most appropriate**
- 4. Conducting a compensation analysis for each employee**



1. IDENTIFY AFFECTED EXEMPT EMPLOYEES

- Identify the organization's exempt employees that are paid at or below \$47,476.
- As a best practice, consider identifying exempt employees at or below \$55,000.

Considering the salary of employees just above the new level may allow you to avoid some of the wage compression that could occur.

WHAT ABOUT WAGE COMPRESSION?

When the salary “floor” for a position is increased but the “ceiling” is not, this causes wage compression for a particular position or tier of positions. For example: Employee A is new to the company and making \$45,000; Employee B has the same title as Employee A but has been in the position for 5 years and is making \$55,000. The company elects to increase Employee A’s salary to the proposed threshold, should Employee B receive a pay raise as well?

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2. CALCULATE TOTAL HOURS WORKED BY EACH AFFECTED EMPLOYEE



WHY GO THROUGH THE TROUBLE?

Failure to properly estimate an employee's hours worked may lead to shocking results when you reclassify them as hourly. For instance, assuming that an employee is working 40 hours per week and calculating their new hourly rate based on this could lead to a huge amount of unexpected overtime payout if the employee has been working more than 40 hours per week on a regular basis.

In order to properly assess compensation in the upcoming steps, it's necessary to first determine an accurate number of hours worked for each employee identified in Step 1.

We need to ask our exempt employees to do something new: track their time.

How to go about this is up to you, but here are a few options to measure current hours worked:

- Ask the employees to begin tracking their hours worked. This is our preferred method, as it will likely result in the most accurate timekeeping records. You can ask employees to use the same timekeeping system as non-exempt employees, have them track their time on the computer, on a paper timecard, or even on a phone app - it's up to you.
- Ask managers to begin tracking hours worked for their exempt employees.
- Ask managers to estimate the number of hours worked for each of their exempt employees.
- Utilize the standard company workweek (e.g. Monday through Friday, 8:30am to 5:00pm), or the standard workweek for the position in question, then estimate the number of hours worked in excess of 40 per week.

Asking exempt employees to begin tracking hours worked without providing detailed reasoning may cause confusion. You'll want to clearly communicate with employees that this is for tracking and preparation purposes only and will have no effect on their current salary. The sole purpose is to prepare for compliance with the new laws-not micromanagement.

FLSA Changes: Decision-Making Guide

3. CONSIDER APPROPRIATE COMPENSATION

Identify each employee's current base salary and total incentive pay (bonus, commissions, any other incentive pay). Add these amounts to get their total annual earnings.

COMPARE THIS AMOUNT TO THE FOLLOWING PAY OPTIONS:

- Increasing the employee's pay to \$47,476.
- Re-classifying the employee as non-exempt and paying them on an hourly basis at a rate determined by their current salary divided by 2,080. This simple equation works best if the employee currently works around 40 hour per week on average.
 - Calculation for hourly for rate of pay: total annual earnings + 2,080 hours (40 hours per week for the full year)
 - Example: $\$50,000 + 2,080 = \24.04 per hour

4. CONDUCT A COMPENSATION ANALYSIS

Employers have three options for employees who do not meet the new exempt criteria:

1. Continue to pay them on a salary basis but consider them non-exempt from overtime; you'll need to continue to track their hours and pay overtime when they work over 40 hours in a workweek.
2. Reclassify the employee as hourly non-exempt and pay an hourly wage with overtime when they work over 40 hours in a workweek. This can be accomplished using either hourly rate calculation listed in Step 2.
3. Raise their base salary to the minimum threshold of \$47,476.

Salary non-exempt is a somewhat risky classification, so we recommend caution here. This pay classification requires strict employees, in order to determine overtime eligibility. This includes keeping track of when they begin and end work each day as well as compliance with any state mandated meal period requirements.

Consider whether or not incentive pay will continue to be provided. Providing incentive pay to non-exempt employees can complicate overtime calculations, since those incentive payments must be included in an employee's base pay when determining their overtime rate. Essentially, incentive payments will increase an employee's base pay rate and thus increase their overtime rate for that week as well. Although incentive payments can continue to be a great motivator, a little more math is required when they are provided to non-exempt employees who work overtime.

FLSA Changes: Implementation Guide

Source: NetHRSupport Center Implementation

FLSA Changes: Implementation Guide

In this guide we focus on implementation of changes your organization may need to make in the wake of the final rule. There are the steps in that process that we'll be looking at:

- 1. Considering the company's policies & practices**
- 2. Communicating the changes internally**
- 3. Conducting training to ensure understanding and compliance**
- 4. Monitoring and revising company budgets and processes**

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STEP 1

CONSIDER THE COMPANY'S POLICIES & PRACTICES

With the possible reclassification of a number of your organization's employees, we recommend reviewing your current policies and procedures. This is especially important for organizations who don't currently have many non-exempt employees, and therefore may not be as focused on policies that deal with timekeeping and work hours. If these policies and practices aren't currently covered in your employee handbook, we recommend adding them now, or distributing them separately as Handbook amendments. Once distributed, employees should sign-off to acknowledge their acceptance and understanding of these important policies. Samples of each policy can be found in the NetHR Support Center by clicking on the Tools icon. If your policies and practices are already covered in your handbook, now is a good time to re-emphasize them with the newly classified employees.



Changing habits can be a challenge, but changing the habits of your formerly exempt employees with regards to timekeeping is critical to prevent a wage and hour violation. These employees are likely used to "running the clock" after hours - many of them may be used to responding to work email, finishing up projects, taking client calls, or engaging in other work tasks during non-work hours. While intentionally working off-the-clock may not be your employee's goal, we want to be sure that the policies are clear about expectations with respect to off-the-clock work and the organization's commitment to recording all time worked by non-exempt employees.

THE GOLDEN RULE

While reviewing the recommended policies, keep in mind the golden rule of wage and hour: non-exempt employees must be paid for all time they are “suffered or permitted” to work. This doesn’t just mean time in the office, but all time, whether approved by the employer or not.

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TIMEKEEPING POLICIES AND PRACTICES

Consider that your previously exempt employees may not be familiar with your timekeeping procedures, e.g., how to track time worked, limits on clocking in before their scheduled start time, how to properly track evening work to check emails, how and when to turn in their time for each pay period.

OFF-THE-CLOCK WORK POLICY

All hours worked by a non-exempt employee must be recorded and compensated, even those performed outside of the employee's standard shift. Therefore, it's critical to have a policy in place that informs employees that all time worked must be tracked, and that off-the-clock work is prohibited by the company. In other words, employees must follow their written work schedule and may be disciplined for not doing so. Please note that refusing to pay for unauthorized time worked - whether it's regular or overtime - is not permissible.



BRING YOUR OWN DEVICE POLICIES

If a non-exempt employee checks their work email on their personal device (e.g. smart phone, tablet, or home computer), time spent working on this device is considered time worked, and should be tracked and paid accordingly. Many employers don't allow a non-exempt employee to use their personal devices for work purposes for this very reason, or only allow such use upon authorization from the company. Additionally, a good "Bring Your Own Device" policy will require that employees accessing company information from their device have security measures in place to protect the company's confidential information.

MEAL AND REST PERIOD POLICIES

Many states require meal and/or break periods for non-exempt employees, depending on the length of their shift, and many companies choose to provide meal and break periods voluntarily. It's important to inform employees of these breaks and your clock in/out procedures, and to notify them that no work should be performed during such breaks. Again, if work is performed, it must be compensated, so the policy should include instructions for notifying a manager or supervisor if a working meal period occurs.

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OVERTIME POLICIES AND PRACTICES

Now is the time to ensure that you're familiar with your state and local overtime laws. Although most employers will only be subject to the federal requirement to pay time and one-half for hours worked over 40 in one workweek, Alaska, California, Colorado, and Nevada each have daily overtime provisions, and Massachusetts and Rhode Island require some employers to pay a premium for work on Sundays and certain holidays. It's important that employees and managers are aware of the rules for compliance.

Additionally, if the company requires pre-authorization of overtime worked in order to stay on budget and control spending, it's best to share these expectations via an overtime policy.

TRAVEL TIME POLICIES AND PRACTICES

Since non-exempt employees must be paid for all time worked, travel time for those customarily engaged in work travel may require further consideration. There are a few narrow exceptions when travel time isn't payable (e.g. when the employee is a passenger in a vehicle or during a standard morning/evening commute), but it's good to assess an employee's travel schedule to ensure proper pay.



PAYROLL CHANGES

INCENTIVE PAY:

Payroll changes are especially relevant as they relate to issuing incentive pay (non-discretionary bonuses, commissions or any other non-hourly pay) to non-exempt employees. Per FLSA requirements, overtime must be calculated weekly based on the employee's "regular rate of pay." However, incentive pay must be included in the employee's "regular rate of pay" calculation. For weeks in which a non-exempt employee earns both overtime and incentive pay - whether provided at the time or retroactively - the company must calculate (or recalculate) the employee's regular rate of pay so that it includes both their base pay and incentive pay for the week, then utilize the new amount for overtime calculations. Please see the FAQs at the end of this guide for an example calculation.

WORKWEEK:

It's important that the individual responsible for payroll, along with managers and employees, are well-aware of the company's 7-day workweek. Every company must have an established workweek that is not adjusted or altered to avoid overtime. Each workweek is assessed individually for overtime calculations, and overtime must be paid for each workweek in which it is earned.

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NOTE:

Arrangements where an employee receives amounts of time off (also known as compensatory or “comp time”) in place of overtime wages are not permitted for non-exempt employees of private employers. Non-exempt employees are due all applicable overtime pay for applicable overtime hours worked in the workweek.

STEP 2 COMMUNICATE THE CHANGES

Applicable changes need to be communicated clearly to the whole company. Things to consider:

WHO WILL COMMUNICATE THESE CHANGES?

Think about the size and structure of your organization, and who is most capable of getting the message to all employees in an efficient and positive manner. Consider managers, the executive team, and your human resources professional.

WHO DO WE NEED TO COMMUNICATE WITH?

Decide if you will only discuss changes with newly non-exempt employees or if a company-wide notification makes the most sense. The latter may be preferable if the changes will impact a number of employees whose status is not changing. For instance, if numerous work schedules will need to be rearranged, if employees who used to answer multiple internal questions on weekends will no longer be able to, or if the lunch room is going to be much more crowded, then you may want to extend your notification to all (or most) employees.

WHAT WILL BE COMMUNICATED?

A sample letter is provided in editable Word document at netchexonline.com/dol-overtime-change. The letter includes the following:

- A high-level overview of the FLSA changes
- The decision-making process for FLSA classification
- New classification as non-exempt
- Changes to compensation structure beyond classification as non-exempt
- Company policies and practices for non-exempt employees

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HOW WILL CHANGES BE COMMUNICATED?

This communication may be in the form of an email, web meeting, live meeting, or one-on-one meetings. We recommend several communications over the course of time, beginning with a high-level overview. Reminders even after the change in classification will be necessary to make certain that new policies and practices are understood and followed.

WHAT IS THE TIMING FOR COMMUNICATION?

Some states have requirements for advanced notice of any changes to pay. Others require issuing written notice of the change.

For those states that don't have requirements, we recommend at least one pay period advanced notice of any changes to pay, but for a change in classification two or more pay periods' advanced notice is best.

WHAT SHOULD BE DOCUMENTED?

Assuming your state does not have specific documentation requirements, we recommend clearly documenting these changes for the employee's personnel file. All details for the classification change should be documented, including new FLSA classification as non-exempt, type of pay received (e.g., hourly, salary, piece rate), and the effective date of the change. This document should be signed by the employee, their manager, and the human resources representative, and then stored in the employee's personnel file. If the company makes changes to non-exempt employment policies as discussed above, updated policies should be distributed and acknowledged by each employee, and the acknowledgment form should be maintained in their personnel file.

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STEP 3 CONDUCT TRAINING



Set aside time to train your supervisors and managers to ensure that new and updated company policies and practices are accurately communicated, understood, followed, and enforced. Additionally, managers and supervisors must understand the company's overtime practices and the budget implications of reclassifying employees. For example, if overtime should be avoided entirely, managers may need to adjust their scheduling to accommodate for this. Managers also may need to examine their staffing models to ensure adequate staffing for service or product output.

Employees must be trained so that they are aware of each policy and how it affects them and their work each day. Employees must also understand that once they are trained and acknowledge the policies, failure to comply will result in discipline. Both managers and employees must be aware of

what constitutes compensable time, as this is likely a sizable adjustment. For example, travel time and time spent checking emails at night must be compensated. Employees will need to know how to report this time, and managers will need to know how to schedule accordingly.

When training employees on the relevant policies and practices, it may be worth a few minutes of your time to discuss that the driving force behind these changes is the FLSA, not your opinion of the reclassified employees. For better or worse, being exempt (or salaried) has been a status symbol in the American workplace. Given the potential for bruised egos, it's important to communicate that this change isn't a result of the employee's performance, dedication to the company, or contribution - it's simply a result of changes to federal law that the company must comply with.

TIP:

Time, energy, and money spent on training will be well-spent. Proactive training on compliance - prior to the rule's effective date and in the following six months to a year - will cost a small fraction of the price of defending wage and hour claims.

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STEP 4

MONITOR AND REVISE COMPANY BUDGETS

Now that the final rules have been issued, you should be able to analyze company budgets to determine the impact. Depending on the scale of the changes your organization needs to make, continuous monitoring of budgets may be necessary for the first six months to a year.

You may also want to consider planning ahead and assessing next year's budget. The Department of Labor (DOL) originally proposed a threshold of \$970 per week (\$50,440 annually), but the new rule reached a compromise based on the 40th percentile of income for salaried full-time workers in the region of the US with the lowest wages (currently the South). Further inflation adjustments will be made every three years thereafter using the same 40th percentile criteria.



FAQS

WHEN SHOULD I CHANGE AN EMPLOYEE'S STATUS TO NON-EXEMPT?

AS SOON AS POSSIBLE NOW THAT THE FINAL RULES HAVE BEEN RELEASED!

We recommend notifying employees of their classification change at least 2-4 weeks ahead of the effective date. Then, for ease of payroll processing, we recommend an effective date for the change no later than the start of the pay period that includes the final rule's effective date. This will prevent a mid-pay period classification change. Issuing pay to an employee for one pay period that includes classification as both exempt and non-exempt is complicated, and your payroll specialist will thank you for using a pay period start date for ease of transition.

IS ISSUING COMMISSIONS, BONUSES, OR OTHER PAY TO NON-EXEMPT EMPLOYEES DIFFERENT?

YES, AND IT'S DEFINITELY MORE COMPLICATED THAN IT IS FOR EXEMPT EMPLOYEES.

The FLSA requires that overtime is calculated weekly based on the employee's "regular rate of pay." However, although they may not seem "regular" commissions, non-discretionary bonuses and other non-hourly pay must be included in the "regular rate of pay" calculation.

For weeks in which a non-exempt employee earns both overtime and incentive pay - whether provided at the time or retroactively - the company must calculate (or recalculate) the employee's regular rate of pay so that it includes both their base pay and incentive pay for the week, then utilize the new amount for overtime calculations.

HERE'S AN EXAMPLE OF THIS CALCULATION, COURTESY OF THE DEPARTMENT OF LABOR:

An employee paid biweekly at a rate of \$12 per hour plus a \$100 attendance bonus, working a schedule of 56 hours per week as shown in the chart below, would be due overtime pay as follows:

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WEEK 1	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Hours Worked	8	8	8	8	8	8	8
WEEK 2	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Hours Worked	8	8	8	8	8	8	8

\$100 (bi-weekly attendance bonus) ÷ 2	= \$50 (weekly bonus equivalent)
56 hours worked x \$12/hour + \$50 (weekly bonus equivalent)	= \$722 (total ST compensation) \$722
\$722 (total ST compensation) ÷ 56 hours worked	= \$12.89 (regular rate)
\$12.89 (regular rate) x ½	= \$6.45 (half-time premium)
\$12.89 (regular rate) + \$6.45 (half-time premium)	= \$19.34 (overtime rate)
40 (straight time hours) x \$12.89 (regular rate)	= \$515.60 (straight time earnings)
16 (overtime hours) x \$19.34 (overtime rate)	= \$309.44 (overtime earnings)
Total earnings for week one	\$825.04
Total earnings for week two	\$825.04
Total earnings for bi-weekly period	\$1,650.08

WHAT'S THE DIFFERENCE BETWEEN A NON-DISCRETIONARY AND DISCRETIONARY BONUS? ESSENTIALLY, NON-DISCRETIONARY BONUSES ARE GOAL-BASED AND GUARANTEED IF GOALS ARE MET. DISCRETIONARY BONUSES ARE AT THE EMPLOYER'S WHIM AND CANNOT BE EXPECTED.

The FLSA defines non-discretionary bonuses as those that are announced to employees to encourage them to work more steadily, rapidly or efficiently, and bonuses designed to encourage employees to remain with an organization. If there is an established set criteria an employee has to meet, and the bonus is guaranteed to be earned once those criteria are met, that will be considered a non-discretionary bonus. All non-discretionary bonuses must be included in the regular rate of pay, as outlined above, and will impact the overtime rate when they are issued in the same workweek in which overtime is earned.

Not many bonuses qualify as discretionary under the FLSA, though those that do allow exclusion from the regular rate of pay and overtime calculations. A discretionary bonus provided to an employee is just that: something an employer is not obligated to provide and can give to any employee for any reason or no reason at all. Generally they're given out of appreciation, loyalty, or good service. Employees do not expect them.

WILL BONUSES AND COMMISSION COUNT TOWARDS THE MINIMUM SALARY THRESHOLD? NO.

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Note that those exempt under the Outside Sales Employee exemption (which is narrow) are not subject to the minimum salary requirement at this time.

CAN I CLASSIFY AN EMPLOYEE AS SALARIED NON-EXEMPT?

YES. HOWEVER, THIS HYBRID SALARIED/NON-EXEMPT PAY CLASSIFICATION CAN PRESENT CHALLENGES

The idea behind paying employees this way is that for weeks where they work 40 hours or fewer, you can essentially hit the “regular weekly pay” button and be done with it. Unfortunately, this has a tendency to make both the employer and employees lackadaisical about timekeeping. But this pay classification still requires strict timekeeping, just as for all non-exempt employees, in order to determine overtime eligibility. This includes timekeeping entries for when work begins and ends as well as compliance with the state’s meal and/or rest period requirements, if applicable. In the event that hours are not tracked properly and there is a dispute, the burden of proof will be on the employer to substantiate that pay was accurate for hours worked, and this will likely be very challenging.

CAN PART-TIME EXEMPT EMPLOYEES REMAIN PART-TIME?

YES, BUT THEY WILL STILL HAVE TO MEET THE NEW MINIMUM SALARY THRESHOLD.

Regardless of whether an employee is full or part-time, they must meet each of the criteria for an exempt classification under the FLSA. Therefore, so long as the pay meets the minimum salary threshold, they are paid on a salary basis, and they meet the duties test, they may be classified as exempt. Failure to meet the minimum salary amount, or any of the other criteria for an exempt classification, will result in a non-exempt classification determination.

DOES THIS CHANGE EVEN APPLY TO ME?

ALMOST CERTAINLY.

There are two ways in which employees can be covered by the FLSA. The first is called “enterprise coverage.” This applies when an employee works for an employer who has an annual dollar volume of cash sales or business done of \$500,000 or more. It also applies if the employer is a hospital, business providing medical or nursing care for residents, school or preschool, or government agency.

The second type of cover is called “individual coverage.” Even when there is no enterprise coverage, the FLSA will cover individuals engaged in interstate commerce. If an employee makes goods that will be shipped out of state, places telephone calls to another state, sends or receives out-of-state shipments, or partakes in any number of other basic business activities, they will qualify for individual coverage.

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Netchex offers employers more than a payroll software. We are a team of payroll, tax, and HR professionals that become an extension of your staff by providing the service and support today's businesses need. With easy access to HR metrics & reporting like Average Hours Worked, Employee Salary Reports, and Total Compensations, Netchex offers all the resources you need to manage the FLSA Overtime Rule Change in one location. Give us a call to see how we can help your team today.

Let's talk. Call (877) 729-2661 or visit us online at www.netchexonline.com

