



2019 FLSA Final Rules Released

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On May 23, 2016, the U.S. Department of Labor issued final rules which raised the standard salary level of \$913 per week. On November 22, 2016, the United States District Court for the Eastern District of Texas issued a preliminary injunction, enjoining the Department from implementing and enforcing the 2016 final rules. On August 31, 2017, the district court granted summary judgment against the Department. The court held that the 2016 final rule's salary level exceeded the Department's authority and that the entire final rules was therefore invalid.

On July 26, 2017, the Department published a Request for Information (RFI) asking for public input on what changes the Department should propose in a new Notice of Public Rule Making (NPRM) on the Executive, Administrative, or Professional (EAP) exemption. After receiving over 200,000 comments, the Department issued its NPRM, proposing to update and revise the EAP regulations. The Department estimated that 1.3 million currently exempt employees would become non-exempt resulting in an estimated \$298.8 million in extra pay for workers.

The Department has formally rescinded the 2016 final rules and replaced it with a new rule that updates the part 541 earnings threshold. The Department has set a new standard salary level of \$684 per week/\$1,368 biweekly/\$1,482 semimonthly/\$2,964 month (equivalent of \$35,568 per year). The Department has also set the Highly Compensated Employee (HCE) annual compensation amount at a new level of \$107,432. **The new salary rates are effective January 1, 2020.**

The Department announced that there would be no automatic future increases and that there are no changes to the duties test at this time.

Additionally, the Department has announced that nondiscretionary bonuses and incentive payments paid on an annual or more frequent basis may be used to satisfy up to 10% of the standard salary level. Such bonuses include, for example nondiscretionary incentive bonuses tied to productivity or profitability. If an employee does not earn enough in nondiscretionary bonuses and incentive payments in a given 52-week period to retain his/her exempt status, the Department permits a "catch-up" payment at the end of the 52-week period. The employer has one pay period to make up the shortfall.

Here is a link to the release from the Labor Department that includes a link to the final regulations - <https://www.dol.gov/whd/overtime2019/>.

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