



## DIVISION OF HUMAN RESOURCE MANAGEMENT ADVISORY

### STATE PERSONNEL SYSTEM

**ADVISORY:** HRMA #2019-004

**DATE:** March 18, 2019

**SUBJECT:**

*Fair Labor Standards Act (FLSA) White-Collar Exemption Update*

**STATUTES/RULES/REGULATIONS/LAWS:**

*Fair Labor Standards Act*

**FORMS:** N/A

**ADDITIONAL REFERENCE MATERIALS:** N/A

Dear Colleagues,

As you may recall, on November 22, 2016, a final rule to change the threshold for overtime exemption was enjoined by the U.S. District Court for the Eastern District of Texas. On November 6, 2017, the U.S. Court of Appeals for the Fifth Circuit held the appeal of that decision in abeyance pending further rulemaking regarding a revised salary threshold.

Under currently enforced law, employees with a salary below \$455 per week (\$23,660 annually) must be paid overtime if they work more than 40 hours per week. Workers making at least this salary level may be eligible for overtime based on their job duties. This salary level was set in 2004.

On March 7, 2019, the U.S. Department of Labor (DOL), Wage and Hour Division (WHD) announced a Notice of Proposed Rulemaking (NPRM). This proposal would update the standard salary level to \$679 per week (\$35,308 annually). At or above this salary level, eligibility for overtime varies based on job duties.

The NPRM includes:

- An increase to the minimum salary required for an employee to qualify for exemption from the currently-enforced level of \$455 to \$679 per week (equivalent to \$35,308 per year).
- An increase to the total annual compensation requirement for "highly compensated employees" (HCE) from the currently-enforced level of \$100,000 to \$147,414 per year.
- A commitment to periodically review and update the salary threshold. An update would continue to require notice-and-comment rulemaking.
- Allowance for employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid annually or more frequently to satisfy up to 10 percent of the standard salary level.

The NPRM does not propose:

- Changes to the overtime protections for police officers, fire fighters, paramedics, nurses, and laborers including: non-management production-line employees and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, and construction workers.
- Changes to the job duties test.
- Automatic adjustments to the salary threshold.

The NPRM is only a proposal. Any changes would not take effect until after publication of a Final Rule. More information is available at [www.dol.gov/whd/overtime2019](http://www.dol.gov/whd/overtime2019).

The following are some important reminders for agencies in preparation for the potential changes:

- There are currently approximately 2,800 excluded employees within the State Personnel System with a salary below \$35,308 annually. Agencies should begin to identify those positions which may be affected by the proposed changes.
- The salary threshold and overtime calculations are based on the regular rate of pay (including additives), not the base rate of pay.
- Although the duties tests are not changing, review position descriptions to ensure the duties are current and accurate.
- Unless the position meets all elements for exemption (satisfies all duties tests for the applicable exemption; is paid on a salary basis; and meets or exceeds the salary threshold), the employee is automatically eligible for overtime (included).
- Being included for overtime eligibility purposes does not mean the agency must allow the employee to work overtime. Managing workloads and staffing is up to the agency.

If you have any questions, please contact Anthony Tipler at 850-488-3926 or email at [anthony.tipler@dms.myflorida.com](mailto:anthony.tipler@dms.myflorida.com). We will provide additional information as it becomes available.

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