

**PACHC Memo 2016-05**

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**TO:** Chief Executive Officers of Pennsylvania Community Health Centers 16-pt FQHC color.JPG, Rural Health Clinics & Critical Access Hospitals

**FROM:** Cheri Rinehart, President & CEO

**SUBJECT:** Department of Labor Final Overtime Rule

**SUMMARY:** On May 18, 2016, the Department of Labor (DOL) published its final rule updating the overtime regulations. The rule extends overtime pay protections to an estimated 4 million workers nationwide by doubling the salary level, from $23,660 to $47,476, under which employees working more than 40 hours a week must be paid overtime. The effective date of the final rule is Dec. 1, 2016.

**BACKGROUND:**

In 2014, President Obama signed a Presidential Memorandum directing DOL to update the regulations defining which white collar workers are protected by the Fair Labor Standards Act's (FLSA) minimum wage and overtime standards. The memorandum instructed DOL to look for ways to modernize and simplify the regulations while ensuring that the FLSA's intended overtime protections were fully implemented. In July 2015, DOL published a proposed rule. The Department received over 277,000 comments in response to that proposed rule, but in large part stuck to its proposals in the final rule.

**KEY PROVISIONS OF THE FINAL RULE:**

The final rule focuses primarily on updating the salary and compensation levels needed for executive, administrative, highly compensated and professional workers to be exempt. Specifically, the final rule:

1. Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage census region, currently the South ($913 per week; $47,476 annually for a full-year worker);
2. Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally ($134,004); and
3. Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the aforementioned percentiles and to ensure that they continue to provide useful and effective tests for exemption.

Additionally, the final rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level. Also, whether a worker is full-time or part-time, the standard salary level to qualify for exemption will be $913 per week.

**The effective date of the final rule is December 1, 2016.** The initial increases to the standard salary level (from $455 to $913 per week) and HCE total annual compensation requirement (from $100,000 to $134,004 per year) will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

**IMPACT ON HEALTH CENTERS:**

Most members of PACHC fall into the category of 501(c)(3) nonprofit organizations. The FLSA final overtime rule makes some limited nonprofit organization and other exceptions that could apply to you:

* **Enterprise Coverage**. If a nonprofit has annual gross volume of sales made or business done of less than $500,000, then it may be considered a “not covered enterprise” under the new overtime rule.
* **Individual Exception**. If a health center or other nonprofit does meet the enterprise exception, its individual employees may still be subject to the rule if they engage in interstate commerce. For Pennsylvania healthcare facilities, this could include seeing patients or billing insurance companies from neighboring states.
* **Volunteer Exception**. Many FQHCs use volunteers to supplement paid staff and the federal government encourages this. Volunteers are a concern of the Department of Labor only if they “volunteer in commercial activities run by a non-profit organization” or if they “displace regular employed workers or perform work that would otherwise be performed by regular employees.” If a volunteer fits either of these descriptions, you should consult a labor lawyer or other expert about the volunteer’s status regarding the FLSA.
* **Professional Exemption**. Physicians, along with lawyers and teachers, fall into the “professional exemption” to the FLSA. The salary and salary basis requirements do not apply to bona fide practitioners of medicine. This also applies to physician interns and residents.
* [**Highly Compensated Employees**](https://www.dol.gov/whd/overtime/fs17h_highly_comp.pdf)**.** Similar to the professional exemption, the FLSA overtime rule does not apply to individuals earning more than $134,000 annually.

**RESOURCES:**

The Department of Labor offers a variety of resources to support you in understanding and compliance with the rule, including:

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| **Summary** | **Website** |
| DOL FLSA  webpage | [www.dol.gov/whd/flsa/](http://www.dol.gov/whd/flsa/) |
| Overtime for White Collar Workers: Overview & Summary of Final Rule | <https://www.dol.gov/sites/default/files/overtime-overview.pdf> |
| DOL Video on Overtime Changes | <https://www.dol.gov/featured/overtime> |
| General overtime pay fact sheets | <https://www.dol.gov/whd/overtime/fact_sheets.htm> |
| elaws: Employment Laws Assistance for Workers & Small Businesses FLSA Advisor provides employers and employees with the information they need to understand the new law. | [www.dol.gov/elaws/flsa.htm](http://www.dol.gov/elaws/flsa.htm) |
| Handy Reference Guide to the FSLA | <https://www.dol.gov/whd/regs/compliance/hrg.htm> |
| Q&A from the General Information Overtime Webinars | <https://www.dol.gov/whd/overtime/final2016/webinarfaq.htm> |
| Fact Sheet #14A: Non-Profit Organizations and the FLSA | <https://www.dol.gov/whd/regs/compliance/whdfs14a.htm> |
| Guidance for Non-Profit Organizations on Paying Overtime Under the FLSA | <https://www.dol.gov/whd/overtime/final2016/nonprofit-guidance.pdf> |
| Fact Sheet #17D: Exemption for Professional Employees under FLSA | <https://www.dol.gov/whd/overtime/fs17d_professional.htm> |
| Fact Sheet #17H: Highly Compensated Workers | <https://www.dol.gov/whd/overtime/fs17h_highly_comp.pdf> |

In addition, here are some non-DOL resources on the final rule:

* [National Council of Nonprofits Overtime Regulations and the Impact on Nonprofits](https://www.councilofnonprofits.org/trends-policy-issues/overtime-regulations-and-the-impact-nonprofits)
* [Blog: Nonprofits and the Proposed Overtime Rule](https://blog.dol.gov/2015/08/26/non-profits-and-the-proposed-overtime-rule/)

**ACTION REQUIRED:**

If your health center has not evaluated all positions against the final rule to determine which, if any, employees will be impacted, you should do so to ensure any necessary changes are made to comply with the Dec. 1, 2016 deadline. Your options for employees impacted by the rule are:

1. **Raise Exempt Employees’ Salaries to the Threshold.** Beginning December 1, 2016, employees who receive less than $913 per week are considered "non-exempt" and must be paid at least the minimum wage and overtime. Employees who are paid a salary of at least $913 per week and perform job duties that meet the administrative, executive, or professional exemption, may be classified as "exempt." If an exemption no longer applies (i.e. the employee no longer performs certain job duties, or earns less than $913 per week), the employee should be promptly reclassified as "non-exempt" and paid overtime in accordance with federal and state law.
2. **Reclassify Employees as Non-Exempt.** Compare the costs of raising an exempt employee's salary to reclassifying the employee as non-exempt and paying them overtime when they work more than 40 hours in a workweek. If an employee's salary is well below the new minimum and they rarely work overtime, it may be more cost-effective to reclassify them as non-exempt. Conversely, if an employee's salary is closer to the new minimum or they frequently work overtime, you may want to consider raising their salary to maintain the exemption. Remember that with automatic adjustments every three years, you will need to review and adjust exempt employees' salaries at least every three years.

**FOR MORE INFORMATION:** Questions may be directed to Serina Gaston, PACHC Director of Strategic Initiatives & Corporate Compliance, at [serina@pachc.org](mailto:serina@pachc.org); (717) 761-6443, ext. 210.