

Preparing for FLSA Changes



HCM User Meeting - State Personnel Office

November 2, 2016



What we will cover



- History of the FLSA
- Key provisions of the Final Rule effective December 1, 2016
- Compliance options
- Required changes in SHARE

FLSA Training will be held November 9, 2016 from 9:00-11:00 a.m. at SPO



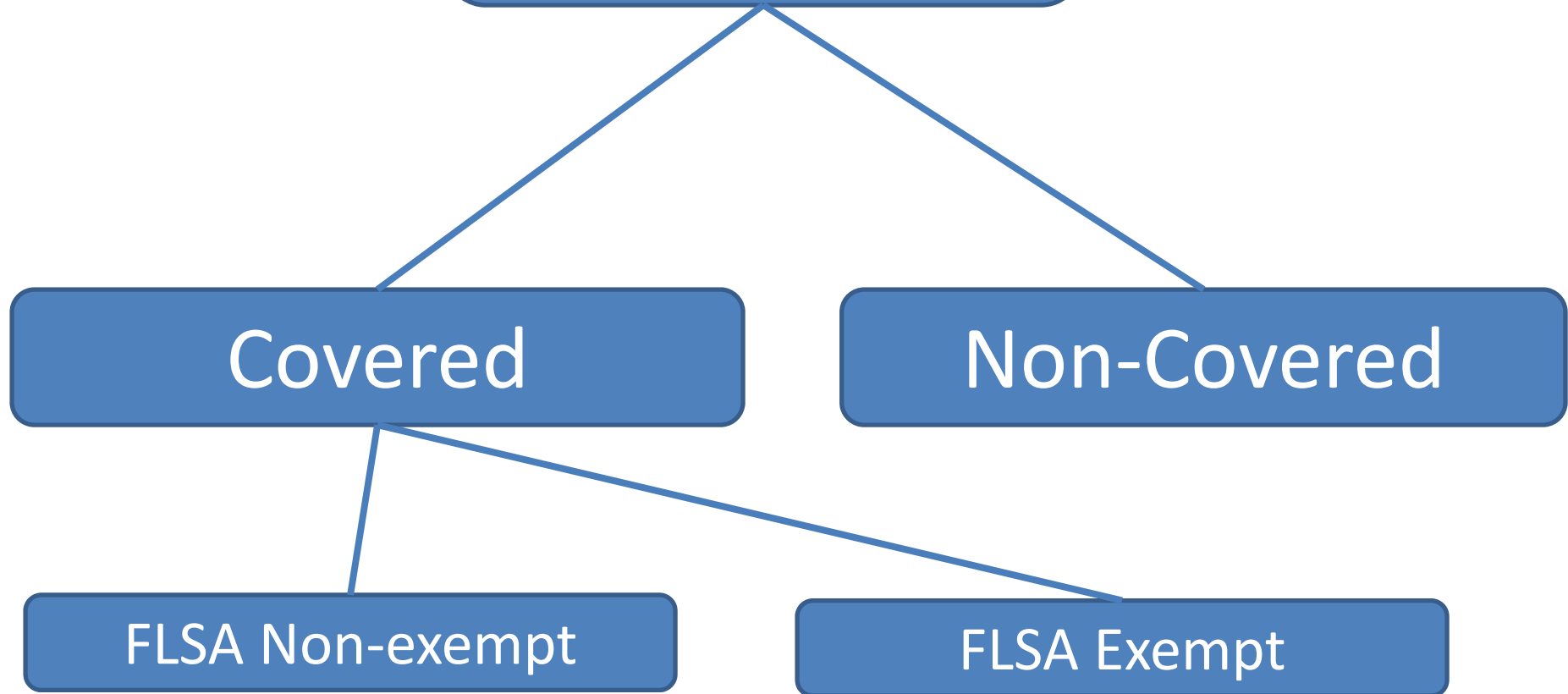
FLSA History



- Enacted in 1938 to establish
 - Minimum wage
 - Overtime provisions
 - Recordkeeping requirements
 - Child labor provisions
- Various amendments
 - Portal to Portal Act in 1947
 - Equal Pay Act in 1963
 - Many other time increase to pay levels, modify duties tests and revised interpretations
- Last revised in August 2004



FLSA



* Recordkeeping Requirements

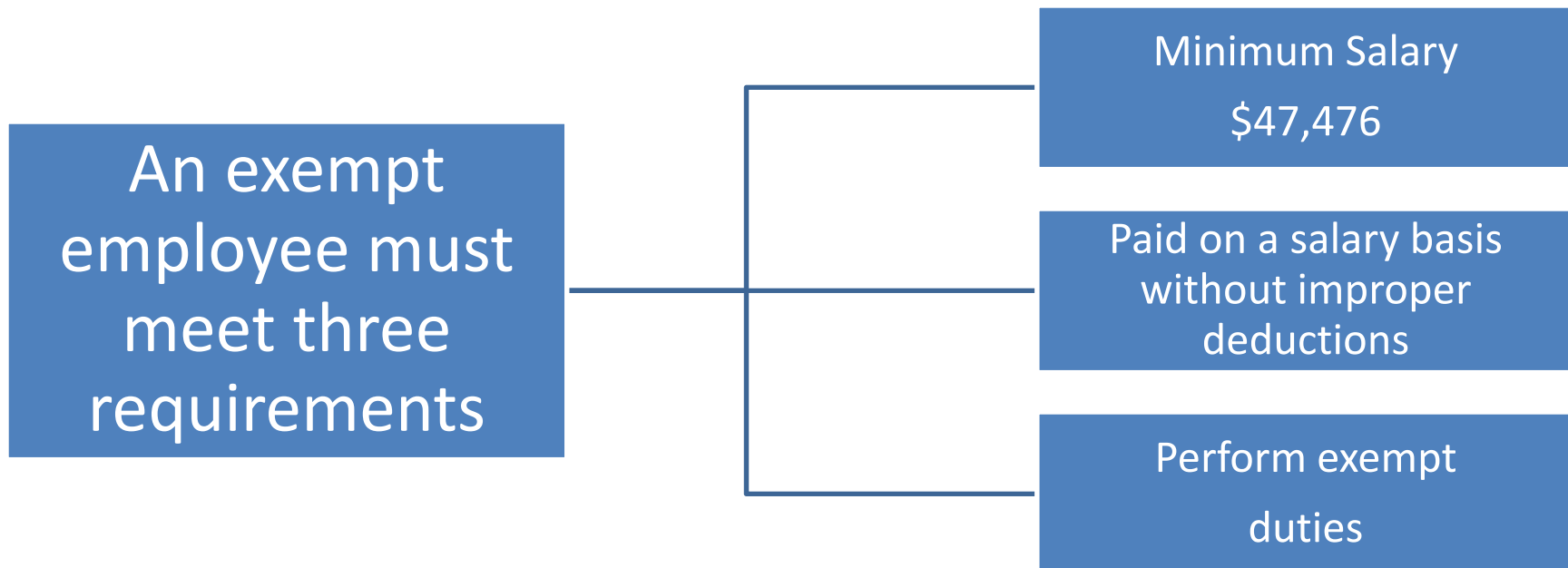
* Premium Overtime

* Recordkeeping Requirements

1.7.4.14 NMAC – Regulates Overtime Provisions in the Classified Service



FLSA Exemptions





White Collar Exemptions



Executive Exemption



Administrative Exemption



Professional Exemption



Computer Exemption



Executive Exemption



- Primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise
- Customarily and regularly direct the work of at least two or more other full-time employees or their equivalent
- Must have the authority to hire or fire other employees or make recommendations carrying particular weight



Administrative Exemption



- Primary duty must be the performance of office or non-manual work directly relating to the management or general business operations of the employer or the employers customers
- Exercise discretion and independent judgement to “matters of significance”



Professional Exemption



- Learned Profession
 - Primary duty must be in the performance of work requiring advanced knowledge
 - Intellectual in character
 - Requires consistent exercise of discretion and independent judgement
 - Field of science or learning
 - Knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction
- Creative Profession
 - Primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor



Computer Exemption



Must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- A combination of the aforementioned duties, the performance of which requires the same level of skills.

Compensated on a salary basis or at least \$27.63 per hour



Current Rulemaking



- President Obama directed the Department of Labor (“DOL”) to update the regulations defining which white collar workers are protected by the FLSA’s minimum wage and overtime provisions
- DOL published a Notice of Proposed Rulemaking in the Federal Register on July 6, 2015
- DOL received 270,000 comments from a variety of interested parties



Key Provisions of the Final Rule



The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. Specifically, the Final Rule:

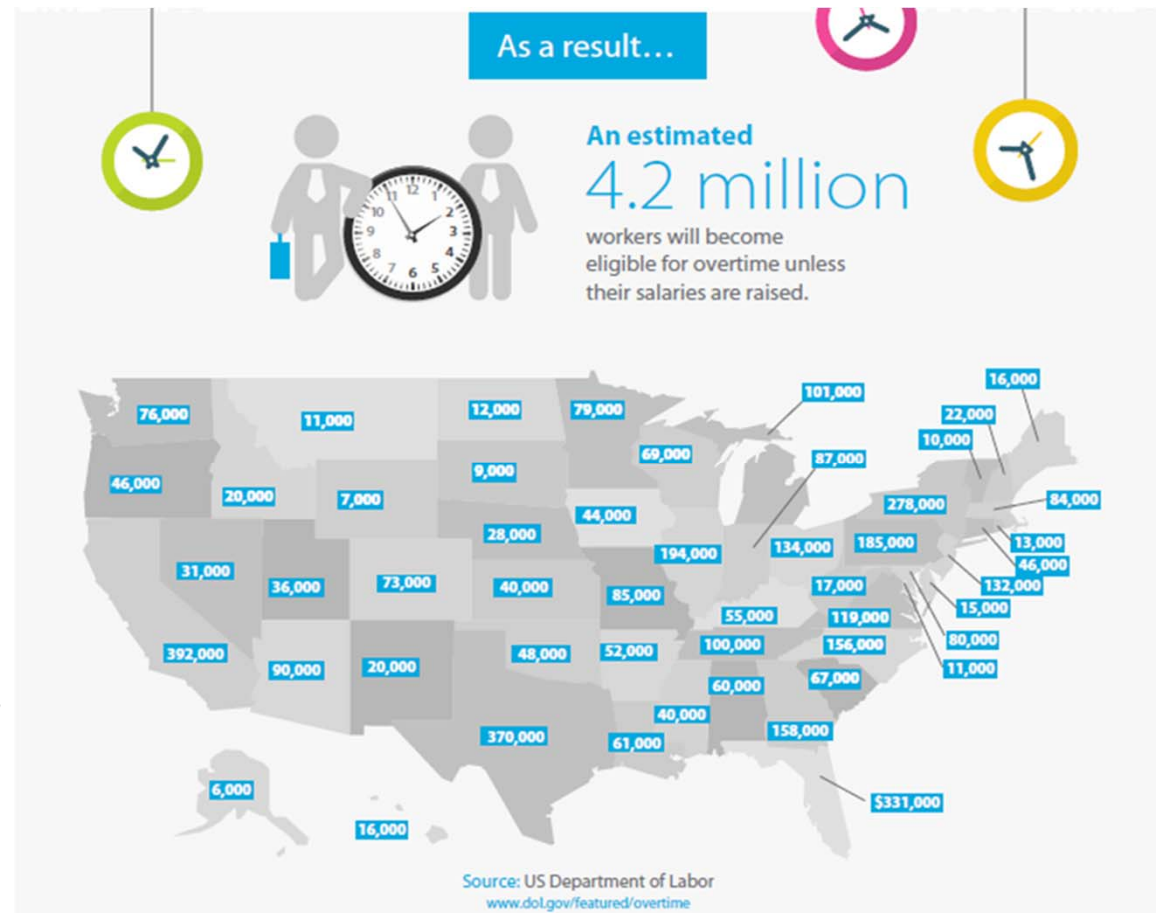
- Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South (\$913 per week; \$47,476 annually for a full-year worker);
- Sets the total annual compensation requirement for highly compensated employees (HCE) subject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



DOL Projected Impact of Regulations



- 4.2 million workers will become eligible for overtime effective December 1, 2016
- 20,000 New Mexico workers
- 1,579 State employees
- 1,132 Classified employees





What is Not Included in Salary?



- Does not include
 - Discretionary bonuses/payments
 - Board, lodging or other facilities
 - Payments for medical, disability or life insurance
 - Contributions to retirement plans
 - Other fringe benefits



Compliance Options



Identify employees who are currently FLSA Exempt and will become FLSA non-exempt.

- Pay overtime
- Manage (reduce or eliminate) overtime
- Raise pay rates if applicable
- Evaluate and Re-align workload



Steps to Compliance



- Examine every FLSA Exempt position currently earning less than \$47,476 to determine proper FLSA classification
- Train HR/Payroll and Manager/Supervisor staff
- Revise agency policies
- Document FLSA determination
- Inform the employees in writing
- Treat employee as non-exempt or exempt as appropriate



Other Considerations



The duties test

Additional hours worked

Flexible schedules

Timekeeping changes

Benefit changes

Pay compression

Impact to employee morale

Management training

Risk of non-compliance

Increased use of non-exempt Managers and Supervisors

Documentation

Communication




Additional Training



- If you want additional training, please email Armida.Zamora@state.nm.us to reserve a spot on November 9, 2016 (9:00 a.m. – 11:00 a.m.) at SPO

U.S. Department of Labor
Wage and Hour Division



Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees

In 2014, President Obama directed the Department of Labor to update and modernize the regulations governing the exemption of executive, administrative, and professional ("EAP") employees from the minimum wage and overtime pay protections of the Fair Labor Standards Act ("FLSA" or "Act"). The Department published a notice of proposed rulemaking on July 6, 2015, and received more than 270,000 comments. On May 18, 2016, the Department announced that it will publish a Final Rule to update the regulations. The full text of the Final Rule will be available at the Federal Register Site.

Although the FLSA ensures minimum wage and overtime pay protections for most employees covered by the Act, some workers, including bona fide EAP employees, are exempt from those protections. Since 1940, the Department's regulations have generally required each of three tests to be met for the FLSA's EAP exemption to apply: (1) the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed ("salary basis test"); (2) the amount of salary paid must meet a minimum specified amount ("salary level test"); and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations ("duties test"). The Department last updated these regulations in 2004, when it set the weekly salary level at \$455 (\$23,660 annually) and made other changes to the regulations, including collapsing the short and long duties tests into a single standard duties test and introducing a new exemption for highly compensated employees.

This Final Rule updates the salary level required for exemption to ensure that the FLSA's intended overtime protections are fully implemented, and to simplify the identification of overtime-protected employees, thus making the EAP exemption easier for employers and workers to understand and apply. Without intervening action by these employees, it extends the right to overtime pay to an estimated 4.2 million workers who are currently exempt. It also strengthens existing overtime protections for 5.7 million additional white collar salaried workers and 3.2 million salaried blue collar workers whose entitlement to overtime pay will no longer rely on the application of the duties test.

*** Key Provisions of the Final Rule ***

The Final Rule focuses primarily on updating the salary and compensation levels needed for EAP workers to be exempt. Specifically, the Final Rule:

- 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, which is \$913 per week or \$47,176 annually for a full-year worker.
- 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, which is \$134,004, and

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WHD-2016-01



UNITED STATES DEPARTMENT OF LABOR

Overtime Final Rule and State and Local Governments

State and local governments. The Fair Labor Standards Act ("FLSA") has long applied to state and local governments. The FLSA and the Department's regulations, however, contain some unique provisions applicable only to public sector workers, notably the permitted use of compensatory time off, under certain conditions. These provisions will help state and local governments adapt to the overtime final rule.

Overtime Final Rule. The Department of Labor's final overtime rule updates the salary level required for the executive, administrative, and professional ("white collar") exemption to ensure that the FLSA's intended overtime protections are fully implemented, and it provides greater clarity for white collar workers and their employers, including for state and local governments. The rule also will lead to better work-life balance for many workers, and it can benefit employers by increasing productivity and reducing turnover.

The final rule updates the salary threshold under which most white collar workers are entitled to overtime to equal the 40th percentile of weekly earnings of full-time salaried workers in the lowest wage Census region, currently the South. The final rule raises the salary threshold from \$455 a week (\$23,660 for a full-year worker) to \$913 a week (\$47,176 for a full-year worker) effective December 1, 2016.

The FLSA and State and Local Governments


Neither the FLSA nor the Department's regulations provide a blanket exemption from overtime requirements for state and local governments, nor for public sector workers. However, the FLSA contains several provisions unique to state and local governments, including compensatory time ("comp time").

Comp time. Pursuant to an agreement with employees or their representatives, state or local government agencies may arrange for their employees to earn comp time instead of cash payment for overtime hours. Any comp time arrangement must be established pursuant to the applicable provisions of a collective bargaining agreement, memorandum of understanding, any other agreement between the public agency and representatives of overtime-protected employees, or an agreement or understanding arrived at between the employer and employee before the performance of the work. This agreement may be evidenced by a notice to the employee that compensatory time off will be given in lieu of overtime pay (for example, providing the employee a copy of the personnel regulations). The comp time must be provided at a rate of one-and-one-half hours for each overtime hour worked. For example, for most state government employees, if they work 48 hours in a single workweek (8 hours of overtime), they would be entitled to 6 hours (1.5 times 4 hours) of compensatory time off. When used, the comp time is paid at the regular rate of pay.

Most state and local government employees may accrue up to 240 hours of comp time. Law enforcement, fire protection, and emergency response personnel, as well as employees engaged in seasonal activities (such as employees processing state tax returns) may accrue up to 480 hours of comp time. An employee must be permitted to use comp time on the date requested unless doing so would "unduly disrupt" the operations of the agency.

Fire and police small-agency exemption. The FLSA also provides an exemption from overtime protection for fire protection or law enforcement employees, if they are employed by an agency that employs fewer than five fire protection or law enforcement employees, respectively.

U.S. Department of Labor
Wage and Hour Division



Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, [29 CFR Part 541](#).

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both [minimum wage](#) and [overtime pay](#) for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for [executive](#), [administrative](#), [professional](#), [computer](#) and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Executive Exemption
To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemption
To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or [fee](#) basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

FG 17A



SHARE Issues



- System updates in SHARE **MUST** be completed by **November 18**

Notes	Total
Correct Workgroup, incorrect FLSA Status	479
Incorrect Workgroup, Correct FLSA Status	365
Incorrect Workgroup, incorrect FLSA Status	948
OK, but hourly rate on cusp of FLSA law	62
Unknown	66
Grand Total	1,920



Questions

