



The New Wage And Hour Regulations: Is Your Institution in Compliance?

Insights

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The long awaited changes to the federal wage and hour regulations were finally released by the Department of Labor (USDOL) on May 18, 2016. The changes, which generally relate to the salary basis amount required for the white collar exemptions, go into effect on December 1, 2016.

We set forth below a snapshot of the key changes to the law and those areas that did not change. You should note that this article only summarizes the federal wage and hour changes. Specific states may impose additional requirements.

General Overview Of Key Changes

The new salary requirement for the executive, administrative, and professional exemptions (except for teaching professionals) will increase from \$455 to \$913 per workweek, or \$47,476 per year (for a 12-month employee). This is about double the current amount (\$23,660 per year) but less than what the USDOL initially proposed.

The salary basis for the highly compensated employee exemption will increase from \$100,000 to \$134,004 annually. Both of these amounts will be updated (likely increased) every three years, with the first update to take place in 2020.

There are no changes to the teacher pay requirements, which fall under the teaching professional exemption. Since 2004, there have been no salary requirements for teachers. Thus, an educational institution is free to pay teachers hourly, salaried, or by commission with no minimum threshold and no minimum wage or timekeeping requirements.

Government Offers Guidance For Educational Institutions

The USDOL has issued a *Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act*, which is available on our website at our [Overtime Pay Resource Center](#) (click on "Additional Resources"). This Guidance is also helpful and instructive for PK-12 institutions.

The Guidance makes clear that a little known special exception to the academic administrative exemption permits a lower salary amount for this category of exempt personnel as long as such individuals are paid at or above the establishment's entrance salary for teachers. Such individuals must perform administrative functions directly related to academic instruction, such as department

must perform administrative functions directly related to academic instruction, such as department heads, academic counselors and advisors, intervention specialists who must be available to respond to student academic issues, and similar positions.

This exception was rarely (if ever) used before because most institutions paid their academic administrative personnel above the current salary threshold of \$455 per workweek and \$23,660 per year. Now, if the institution's entry level salary for teachers is \$40,000 per year, you can pay academic administrative personnel that amount as well. Difficulty might arise for an institution that has many locations, and thus many different entry salary levels for faculty. Your institution would be wise to receive individual advice in determining the appropriate salary level in such a case.

Specific Cases: Coaches And Students

A question that often concerns educational institutions is whether coaches or assistant coaches meet the definition of "teacher" for the purpose of the teaching professional exemption. We have long advised that as long as the individual's primary duty is "coaching, teaching, tutoring, or instructing," the individual will meet the requirements of the teaching professional exemption. The Guidance makes that clear as well and points out that those coaches whose primary duties are recruiting students to play a sport or visiting high schools and athletic camps to conduct student interviews are not considered teachers.

The Guidance also specifically addresses students and makes clear that students who primarily teach (such as graduate teaching assistants) are also exempt as teaching professionals. Research assistants who are engaged in research under a faculty member's supervision in the course of obtaining a degree are considered in an educational relationship and are viewed as students, not employees, even if they receive a small stipend and benefits from the institution.

Residential assistants who are enrolled in the institution and who receive reduced room or board charges or tuition credits from the institution are generally not considered employees. However, those students whose duties are not educational in nature (such as receptionists, ushers, servers, etc.) are employees who must be paid at least minimum wage, receive overtime for all hours over 40, and maintain a time record.

Bottom Line: The Time To Review Is Now

Although the USDOL's regulations make some changes that impact educational institutions, they are not sweeping. Now is the time to ensure that you are reviewing all of the positions that you presently have classified as "exempt" to determine whether each individual meets the requirements for the specific exemption. If so, you will need to determine whether the individual will be paid enough to meet the new salary basis.

Our experience with educational institutions is that many employees are misclassified as exempt and should be converted to a non-exempt status or have their duties changed such that their position meets the requirements of one of the exemptions. To avoid falling into this trap, the time to review your classifications is now.

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