

FP AUTO DEALER SNAPSHOT: WHAT YOUR DEALERSHIP SHOULD KNOW AND DO ABOUT THE NEW FEDERAL OVERTIME RULE

Insights
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You may have heard about the so-called new “overtime” rule, which the U.S. Department of Labor announced on April 23. You also may have heard that the new rule will require employers to increase the annual salary paid to certain employees. And you may already know that employees who are not now eligible for overtime pay under the “old rule” may be eligible for OT under the new rule, if it survives legal challenges. What you probably want to know now is how the new rule could affect your dealership. You have come to the right place. Spoiler Alert: the rule change should have minimal impact on most dealerships – but you should still take this opportunity to review the new requirements and how they might impact your business. Here’s what you need to know and what you should do before the effective dates.

Changes Impact White-Collar Exemptions Only

Review the current overtime rules. This is a good starting place for understanding what the new rule does and does not change. Federal law (and many state laws) requires most employers to:

- pay most employees at least minimum wage for all hours worked in a workweek;
- pay them an overtime premium for all hours worked over forty in a workweek; and
- maintain proper records of their hours worked and pay.

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Most of these laws, however, partially or completely exclude or exempt qualifying employees in certain job positions from some or all the requirements listed above. For example, qualifying dealership service technicians, service advisors, parts counterpersons, and salespersons are exempt from the federal law's overtime requirement, but they are not exempt from the law's minimum wage and recordkeeping requirements. Importantly, and as explained below, the new rule does not apply to or impact partially exempt employees, even if they have a salary component in their pay plans.

The new rule will apply to and impact only employees who qualify for one of the complete exemptions known as the "white-collar" exemptions. These exemptions may be available to employees who primarily **perform job duties** that are executive, professional, or administrative and who are paid on a "salary basis."

To meet the **salary basis requirement**, an employee must receive a predetermined annualized salary amount that is at least equal to the minimum salary required by law for a white-collar exemption – and that salary cannot be subject to deduction based on the quantity or quality of the employee's work. Employees who do not satisfy both the duties and salary basis requirements do not qualify for a white-collar exemption, even if they earn at least the minimum salary amount.

What Will the New Rule Do?

The sole focus of the new rule is **the salary component** of the white-collar exemptions. It increases the minimum annualized salary required to qualify for the white-collar exemptions.

The current minimum annual salary amount required under federal law for white-collar exempt employees is \$35,568 or \$684 per week. Under the new rule, the salary requirement will be raised in two phases (if the rule is implemented as planned). On July 1, 2024, the minimum annual salary for white-collar exempt employees increases to \$43,888 or to \$844 per week. And it is scheduled to increase again on January 1, 2025, to \$58,656 or \$1,128 per week (again assuming the rule is implemented as planned, despite legal challenges).

The expected consequence of increasing the minimum salary requirement is that employees who currently are

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eligible for a white-collar exemption no longer will be after implementation of the rule because their employers will not be able or want to pay the increased salary. Employees who lose the exemption will be entitled to overtime pay when they work more than 40 hours in a workweek, which is the reason the change is called the “new overtime rule.”

[For a deeper dive into the new requirements, you can read our full insight here.](#)

The Good News for You

The “good” news is that the change applies to the white-collar exemptions only. The other “good” news for retail automotive dealerships is that the change may have minimal impact because you likely employ relatively few employees who qualify for one of these exemptions.

More good news is that many of the dealership employees who qualify for a white-collar exemption may already receive a salary that exceeds the new minimums in the rule. Dealership positions that often qualify for a white-collar exemption include general manager, department manager, controller, and human resources manager.

Additionally, you should note that in qualifying circumstances, the salary requirement may be satisfied with the receipt of a guaranteed draw.

Of course, as with all wage and hour exemptions, eligibility for a white-collar exemption is determined on a case-by-case, employee-by-employee basis.

Importantly, the rule change does not require dealerships to increase the salary amounts of any employee who does not qualify for one of the white-collar exemptions. For example, salespersons, service advisors, finance managers, and parts persons who have a salary component in their pay plan are not impacted by this rule change because they do not qualify for one of the white-collar exemptions.

What Should You Do?

Even though the new rule does not create any new legal obligations for employers until July 1, 2024, at the earliest, the rule has and will bring attention to wage and hour law compliance issues. For that reason, we recommend taking the following steps:

- **Conduct a wage and hour audit to determine compliance with both federal and applicable state laws.** Keep in mind that employers have the burden of establishing that every employee for whom an exemption is claimed qualifies for the exemption. The receipt of a salary, standing alone, does not qualify an employee for an overtime exemption. Likewise, as with all exemptions, the job title, the job description, and a dealership's longstanding pay practice (or that of its competitors) is not determinative as to exempt status.
- **Plan for the implementation of the higher salary requirement for your white-collar exempt employees.** Determine if you must increase anyone's salary to maintain the white-collar exemption and your options if an increase is required.

Conclusion

Because wage and hour issues are often more complicated than they appear, we recommend you consult with legal counsel with dealership experience to assist with compliance issues. Your Fisher Phillips attorney will be happy to assist. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on [our Auto Dealership Team](#).

We will continue to monitor workplace law developments as they apply to employers in the auto dealer industry, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox.