

WHAT K-12 INDEPENDENT SCHOOLS SHOULD KNOW ABOUT THE NEW FEDERAL OVERTIME RULE AND 5 STEPS YOU CAN TAKE NOW

Insights
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A new federal rule will soon make millions of salaried workers eligible for overtime pay – forcing K-12 independent schools to act quickly to evaluate which employees are covered in order to comply, while balancing budgetary restraints and employment contracts for the upcoming academic year. The new rule creates challenges for all employers but especially for schools who tend to have workforces where some employees are not impacted by the change – such as teachers – and others who are. What do K-12 independent schools need to know about the new federal overtime rule? We'll explain everything and give you five steps you should take next.

What Happened?

The U.S. Department of Labor (DOL) issued a much anticipated final rule on April 23 that raises the salary requirements for certain exemptions under the Fair Labor Standards Act (FLSA). The FLSA is a federal law that, among other things, requires employers to:

- pay non-exempt employees an overtime premium of 1.5 times their regular rate of pay for all hours worked beyond 40 in a workweek; and
- keep time records for the hours worked.

These requirements do not apply to “exempt” employees – and the DOL’s latest changes may cause employees who were previously exempt under the FLSA to become non-

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exempt and therefore entitled to overtime pay. Specifically, the final rule raises the salary thresholds under the FLSA's:

- **administrative, executive, and professional exemptions** (which are collectively known as the “white-collar” exemptions) to \$844 a week (\$43,888 annualized) beginning July 1 and to \$1,128 (\$58,656 annualized) beginning January 1, 2025; and
- **“highly compensated employee” (HCE) exemption** to \$132,964 on July 1 and to \$151,164 on January 1, 2025.

The salary threshold is intended to automatically update every three years starting July 1, 2027. We previously covered the new final rule in depth [here](#).

How Does This Affect Schools?

FLSA compliance can be particularly challenging for schools because of the different exemption categories that could apply to their employees, and the new final rule adds to that complexity. Here are the key takeaways:

No Changes to the Teacher Professional Exemption

Teachers who meet the duties test under the FLSA's “professional” exemption are exempt from the FLSA's overtime requirements – regardless of whether they meet the minimum salary threshold – and the DOL's new final rule does not change that. The teaching professional exemption is generally the largest exemption category for schools and requires that the employee spend at least 50% of their time teaching at an “educational establishment” as defined by the FLSA. Coaches can sometimes qualify for this exemption, but you should consult with counsel to determine proper classification.

Other White-Collar or HCE Exemptions Impacted

The new final rule could impact school employees (other than teachers) who historically qualified for white-collar or HCE exemptions – for example, business office managers, supervisors, division heads, chief financial officers, or human resources directors. For an employee to qualify for the white-collar or HCE exemptions, they must be:

- be paid on a salary basis;



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- be paid at least the designated minimum weekly salary – which will soon increase under the new rule; and
- perform certain duties.

The duties tests can vary, so you should consult with counsel to ensure that employees are properly classified. Employees who meet these requirements could become eligible for overtime pay once the rule takes effect if they earn below the new salary thresholds.

Heightened Classification Challenges for Employees Performing Multiple Roles

It is common in school settings for employees to perform multiple roles. To properly classify employees, schools must look closely at the types of duties an employee is performing and how much time they spend performing them.

- Employees who perform both teaching and non-teaching duties **may continue to be exempt** despite the increasing salary thresholds **if their primary duty is teaching (which means spending 50% or more of the workweek in a teaching capacity)**. For example, an employee who teaches for more than 50% of the week while handling other tasks (such as serving as an assistant coach or working in the admissions office) will continue to qualify for the teaching professional exemption.
- On the other hand, employees who teach for a smaller portion of their workweeks, such that teaching is not their primary duty, **could become eligible for overtime pay** under the new rules if they were previously exempt under one of the non-teaching exemptions, are not considered academic administrators under the applicable regulation, and earn below the new salary thresholds.

Proper classification is crucial because the potential FLSA violations for misclassifying employees can be significant, including back pay, liquidated damages (a doubling of the back pay), and attorney's fees.

Your 5-Step Action Plan

In light of the new final rule, you should take these five steps:

1. Evaluate your employees' status as exempt or non-exempt to **determine if employees are properly classified** in general, before deciding on next steps.
2. If an employee is currently exempt (except for under the exemption for teachers) and will become non-exempt as a result of the increased salary thresholds, you will need to decide whether to **increase their compensation to maintain their exempt status or pay them overtime as non-exempt employees.**
3. **Factor in any budgetary constraints** and decide how to proceed, as employment agreements have likely already been issued for the upcoming academic year and the deadline to comply with the new final rule is quickly approaching.
4. **Review your policies regarding timekeeping and overtime pay** because you will need to communicate these policies clearly and quickly to employees who will change from exempt to non-exempt status. Now is a good time to review your employee handbooks to make the necessary changes before the start of the 2024-2025 school year. If you have employees who will be classified as non-exempt going forward, this also includes planning for changes like setting them up in your timekeeping system and making sure they receive any training or policy documents that they did not receive while classified as exempt. Impacted employees will benefit from reminders about timeclock use, not checking work emails or doing work when not clocked in, and policies related to approval before working overtime. There may also be impacts to their PTO or benefits depending on your school's policies.
5. **Keep in mind any applicable state laws** that may provide exemptions or other requirements that are more favorable to employees or which require higher salary thresholds than the federal rules.

Conclusion

While we expect to see legal challenges to the new federal overtime rule, you can't count on a court halting the rule before the effective dates and should start planning right away. We will continue to monitor these developments, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further

information, contact your Fisher Phillips attorney, the authors of this Insight, or [any member of our Education team](#).