AAA Memo: HCM 2024-02
Date: May 13, 2024

To: All Appointing Authorities
From: Emily Roberson, HCM Administrator
Re: New FLSA rules

On April 25, 2024, the U.S. Department of Labor announced the final rule regarding the new overtime regulations.

What's new?

The final rule will increase the standard salary level and the highly compensated employee total annual compensation threshold on the rule's effective date on July 1, 2024, and on Jan. 1, 2025; the final rule also provides for future updates of these levels every three years to reflect current earnings data.

Effective July 1, 2024, the standard salary level of full-time salaried workers will now be $844 per week ($43,888 annually). The rule sets the standard salary level at the 20th percentile of earnings of full-time salaried workers in the lowest-wage region (the south) and/or in the retail industry nationally.

Additionally, the total annual compensation requirement for highly compensated employees subject to a minimal duties test will be changed to the annual equivalent of the 80th percentile of full-time salaried workers nationally. The new amount will be $132,964 (up from $107,432 per year).

Furthermore, this allows employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level.

Essentially this means that any employee making less than $43,888 annually will now be classified as a nonexempt employee. Also, employees will not be subject to the white-collar exemptions test until their salary is more than $43,888 annually.

Time period	**Previously**	**Effective July 1, 2024**
Full-time salaried workers		
Per week	$684	$844
Per year	$35,568	$43,888
Highly compensated employees		
Per year	$107,432	$132,964

Time period	Previously	Jan. 1, 2025
Full-time salaried workers		
Per week	$844	$1,128
Per year	$43,888	$58,656
Highly compensated employees		
Per year	$132,964	$151,164

<table>
<tr><th>Time period</th><th>Previously</th><th>July 1, 2027, and every three years after</th></tr>
<tr><td colspan="3">Full-time salaried workers</td></tr>
<tr><td>Per week</td><td>$1,128</td><td rowspan="2">To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.</td></tr>
<tr><td>Per year</td><td>$58,656</td></tr>
<tr><td colspan="3">Highly compensated employees</td></tr>
<tr><td>Per year</td><td>$151,164</td><td>To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.</td></tr>
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Nondiscretionary bonuses

The U.S. Department of Labor allows nondiscretionary bonuses and incentive payments to satisfy up to 10% of the standard salary test requirement. For employers to credit nondiscretionary bonuses and incentive payments toward a portion of the standard salary level test, such payments must be paid on an annual or more frequent basis.

Nondiscretionary bonuses and incentive payments are forms of compensation promised to employees to induce them to work more efficiently or to remain with the company. Examples include bonuses for meeting set production goals, retention bonuses and commission payments based on a fixed formula.

By contrast, **discretionary bonuses** are those for which the decision to award the bonus and the payment amount is at the employer's sole discretion and not in accordance with any preannounced standards. An example would be an unannounced bonus or spontaneous reward for a specific act.

Discretionary bonuses will not be included when satisfying the salary test requirement.

What does this mean for the state?

- Longevity, pay for performance and skill-based payments will count toward the salary test requirement because these payments are paid annually. These types of payments will satisfy up to 10% of the salary test requirement.

Options for compliance

- **Raise salaries:** For workers whose salaries are close to the new threshold and who pass the duties test, employers may choose to raise these workers' salaries to meet the new threshold and maintain their exempt status.
- **Pay overtime or compensatory time:** State and local government employers can continue to pay newly eligible employees a salary and pay overtime or provide comp time for overtime hours in excess of 40 per week.
    - Unlike private sector employees, state and local governments can provide compensatory time rather than cash overtime payments assuming certain criteria is met. For more information, refer to 260:25-7-12.

- **Monitor employee's workload:** Employers can limit the need for employees to work overtime by ensuring that workloads are distributed to reduce overtime, that staffing levels are appropriate for the workload, and that workers are managing their time well.

Note: Compensatory time accrued before July 1, 2024, by exempt employees whose status will change to nonexempt effective July 1, 2024, is not required to be paid out at the expiration of the 180-day time-period. However, should your agency choose to pay out the accrued compensatory time, it shall be used or paid at a straight time basis in accordance with 260:25-7-12, rather than at the time-and-a-half rate. Additionally, it is of paramount importance that you establish a way to differentiate the compensatory time earned prior to and after July 1, 2024, for record-keeping purposes should your agency become the subject of a Department of Labor complaint.

Questions

Please direct any questions or request for additional information to Director of HCM Classification and Compensation Deanna Ferron at deanna.ferron@omes.ok.gov or to HCMClassComp@omes.ok.gov.