

FLSA Amendments FAQ Transcript

1. What is FLSA?

The Fair Labor Standards Act (FLSA) is a federal law which establishes minimum wage, overtime pay eligibility, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments.

The FLSA requires state governments to:

- Pay all covered nonexempt employees for all hours worked at least the Federal minimum wage.
- Pay at least one and one-half times the employee's regular rates of pay for all hours worked over 40 in the workweek.
- Comply with the youth employment standards.
- Comply with the recordkeeping requirements.

2. What are the changes?

The changes update the salary and compensation levels needed for Executive, Administrative, Professional, Computer, Outside Sales, and Highly Compensated employees to be exempt. The salary level is increased to \$913 per week, or \$47,476.00 annually, for full-time workers beginning December 1, 2016. The salary level for highly compensated employees is increased to \$134,004.00 annually. The changes also establish a mechanism for automatically updating the salary and compensation levels every three years beginning January 1, 2020.

It is important to note that there were no changes made to the duties tests required to determine exemption.

3. How do the FLSA amendments effect State government?

The amendments impact State government in the same manner that it impacts the private sector. There were no government-specific amendments.

4. What should agencies do to prepare for the new Rule?

It is important for State agencies to be aware of these changes because current exempt employees, whose salary is below the new threshold of \$47,476.00 or compensation threshold of \$134,004.00, are no longer exempt after December 1, 2016. The employer will be required to then pay overtime, at a rate of not less than one and one-half times the regular rate of pay, for all hours physically worked

beyond 40 in a workweek. Agencies should check the salary levels of current FLSA exempt employees and prepare for potential increases in compensation due to the changes.

5. What do we need to do in wvOASIS to prepare for these changes?

Work with your human resources staff to ensure that all of the information regarding FLSA exemption is currently accurate and updated accordingly. The exemption determination should have been made when the employee's information was initially entered into wvOASIS.

6. When/how should we communicate these changes to the affected employees?

It is recommended that employees be notified in writing if their FLSA exemption status has changed and that at least a one (1) pay period notice.

7. Can job classes identified as exempt differ between agencies or between workgroups/titles within agencies? How should agencies address this disparity?

Exemption status must be determined based upon actual duties performed rather than generic classification specifications. Two employees may have the same position classification but may perform different types of work and/or may have different salaries which could result in one employee being FLSA exempt and the other FLSA nonexempt.

Though disparity may occur, it can be minimized by ensuring that employees are properly classified by keeping the position description up to date and working to achieve internal equity pertaining to compensation, to the extent possible.

8. How do we determine if someone is FLSA exempt?

An employee is FLSA exempt if they meet the duties test and minimum salary threshold for the Executive, Administrative, Professional, Computer, Outside Sales, or Highly Compensated exemptions as set forth by United States Department of Labor. For more information on exemption analysis and FLSA in general, visit the United States Department of Labor website. On this site, you will find frequently asked questions, fact sheets, PowerPoint presentations, and a variety of other very useful resources.

You can also find an FLSA Interpretive Bulletin and FLSA Supervisor's Guide on the Division of Personnel's web site.

9. What assistance will DOP offer to agencies in determining FLSA status?

DOP staff is available to answer technical questions regarding FLSA and the various exemptions. However, the agency must make the exemption determination since any liability for misclassification rests with the employer.

10. What's the difference between DOP exemption and FLSA exemption?

Whether or not an employee is classified (covered) or exempt (not covered) by the Division of Personnel merit system has no bearing at all on FLSA exemption status. It is a common misperception that being exempt from DOP coverage also means the employee is exempt from FLSA coverage.

11. What are our other options?

Agencies could make changes to staffing, schedules, or processes to avoid unnecessary overtime, to the extent possible.

12. Can we give employees pay increases so that they meet the new overtime eligibility threshold?

There is no plan at this time to provide such increases but options are being considered.

13. What will happen if we don't implement change by 12/1/16?

Budget projections for wages may be under estimated and employees may be improperly classified as exempt from the overtime provisions of FLSA. More information regarding the consequences of misclassifying employees is available on the United States Department of Labor web site.