



June 2016

## Memo to CSI Member Schools

### Regarding the US Department of Labor's Final Rule on New Minimum Salary for Exempt Employees

This memo will cover portions of the Fair Labor Standards Act and give an analysis of what has changed with the US Department of Labor's (DOL) final rule to update the regulations defining and delimiting the exemption for executive, administrative, and professional employees. The final rule was announced on May 18, 2016, and was published in the Federal Register on May 23, 2016.

This memo is not a legal opinion. It is designed to provide accurate and authoritative information in regard to the subject matter covered. It is being provided to member schools with the understanding that CSI is not engaged in rendering legal, accounting, tax, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. Laws vary by jurisdiction, and the specific application of laws to particular facts requires the advice of an attorney.

The new final rule will become effective on **December 1, 2016**.

The federal Fair Labor and Standards Act, commonly referred to as the FLSA (29 USC § 201 *et seq.*), establishes the federal minimum wage and a 40-hour workweek with time-and-a-half pay for overtime work for employees. Child labor is also regulated under the FLSA.

#### What has changed?

The final rule focuses primarily on updating the salary and compensation levels needed for employee exemptions. The final rule:

1. The new rule raises the minimum salary of an exempt employee to \$913 per week or \$47,476 annually.
2. The new rule sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to a salary of \$134,004 annually.
3. The new rule establishes a mechanism for automatically updating the salary and compensation levels every three years. The next increase would be January 1, 2020.
4. The new rule amends the salary basis test to allow the employer to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.

#### What did not change?

1. The final rule **does not** make any changes to the duties tests.
2. The final rule **does not** change the administrator or teacher exemption. (These are listed below.)

#### What does this mean for CSI member schools?

1. Salaries for administrators and teachers who meet the requirements below for exemption will not change.

2. Salaries for other exempt employees will need to be increased to at least \$913 per week or:
  - a. They will need to be paid an overtime premium of one-and-a-half times the employee's regular rate of pay for any overtime hours worked. This allows the employee to continue to receive a salary, but any hours worked over 40 hours in the workweek would have to be paid overtime pay.
  - b. The school may also reduce the amount of pay to a base salary of at least the minimum wage and add pay to account for the overtime for hours worked over 40 in the workweek.
  - c. The school may also keep the salary at the same level and eliminate overtime hours. However, if an employee works overtime hours, the school would need to pay overtime hours.

**Example:** The school employs a business manager who currently earns \$770 per week or \$40,000 annually. This person currently works 45 hours per week. Under the final rule, the school would now need to increase this person's salary to \$913 per week (\$47,476 annually) or keep the person's salary the same but pay time and a half (in this case \$29 per hour) for any hours worked over 40 hours in a workweek.

**Acceptable adjustment to comply with the new rule:** The school may reduce the business manager's pay to \$650 and pay the individual time and a half for the five additional hours (\$122) equaling her/his original pay before the final rule.

3. Schools should reevaluate every employee based on the duties test below to determine if they are an exempt employee. If they do not meet the duties test, then those employees should be categorized as nonexempt employees and paid an hourly wage for 40 hours and paid time and a half for time worked over 40 hours.
4. Schools should check state laws that may already have a higher standard than required by federal law. In those cases, the school must follow state law.

### Exempt and nonexempt employees

Under the FLSA, employees are divided into two broad categories, exempt and nonexempt. Executive, professional, and administrative employees can qualify as exempt employees. Exempt means that they do not need to be paid overtime for working more than 40 hours in a workweek. They are not "on the clock."

Caution: The Department of Labor looks at duties, not titles of individuals, when determining whether they are properly classified as exempt from overtime or not.

Here is a brief explanation of the duties test for each category. These remain **unchanged** in the final rule.

**Executive category:** To qualify as an executive exempt person, the individual must do the following:

- (1) Manage an enterprise, department, or subdivision as a primary duty.
- (2) Direct the work of at least two full-time employees.
- (3) Have authority to hire and fire or to make recommendations on hiring and firing.

**Administrative category:** To qualify as an administrative exempt person, the individual must:

- (1) Either be responsible for office work directly related to management or general operations or be responsible for work directly related to academic instruction or training at a school.



- (2) Regularly exercise discretion and individual judgment in matters of significance, as opposed to merely following procedures, and have authority to make important decisions.
- (3) Regularly assist an owner or an executive or perform work that requires special training or experience under only general supervision.

**Educational establishment and administrative functions:**

The administrative exemption is available to those serving in schools whose salary is at least equal to the entrance salary for teachers in the same school and whose primary duty is performing administrative functions directly related to the academic instruction or training in the school. Employees engaged in academic administrative functions include: the superintendent (or other head of an elementary or secondary school system) and any assistants responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; and the principal and any vice-principals responsible for the operation of an elementary or secondary school. Having a primary duty of performing administrative functions directly related to academic instruction or training in a school includes, by its very nature, exercising discretion and independent judgment with respect to matters of significance.

**Professional category:** To qualify as a professional exempt person, the following must apply to the individual:

- (1) The person has knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study or has talent in a recognized field of artistic endeavor.
- (2) The work must require the consistent exercise of discretion and judgment in its performance.
- (3) The work must be predominantly intellectual and varied in character, not routine physical, mental, manual, or mechanical work.

**Teachers in schools:**

Under the professional category, there is a subcategory for teachers. It does not require a college degree to qualify for the exemption; simply teaching in a classroom setting qualifies a person for the exempt classification. K-12 teachers automatically qualify for the professional exemption category whether or not they earn a minimum salary. A teacher qualifies for the overtime exemption by virtue of the position alone. Also, some state laws do require a minimum salary for teachers.

**Additional resources available:**

From the US Department of Labor:

<https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.pdf>

<https://www.dol.gov/whd/overtime/final2016/faq.htm>

<https://www.dol.gov/sites/default/files/overtime-nonprofit.pdf>

<https://www.dol.gov/whd/overtime/final2016/SmallBusinessGuide.pdf>

[https://www.dol.gov/whd/overtime/fs17a\\_overview.htm](https://www.dol.gov/whd/overtime/fs17a_overview.htm)

[https://www.dol.gov/whd/overtime/fs17c\\_administrative.pdf](https://www.dol.gov/whd/overtime/fs17c_administrative.pdf)

This memo of information was prepared by the staff of Christian Schools International in collaboration with the legal legislative office of our partners at ACSI.