



The Soto Law Group, P.A.

LABOR AND EMPLOYMENT PRACTICE GROUP

Legal Information for the Construction Industry
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LABOR & EMPLOYMENT PRACTICE GROUP

Employers! This is an important update to our previous newsletter concerning changes in the FLSA overtime regulations. The final version of the rule has been published! Here's what you need to know:

- The new rule was issued on May 18, 2016.
- As we stated in our last newsletter, this rule changes the FLSA regulations concerning exemptions from overtime pay for executive, administrative, professional, outside sales, and computer employees (cumulatively, "Workers").^[1]
- Salaried Workers earning less than \$913 dollars per week or \$47,476 annually are now nonexempt and eligible for overtime pay.
- This salary threshold will increase every three years. The increase is based on the 40th percentile of the weekly earnings of full-time salaried workers in the lowest-wage Census region, which currently happens to be the South. Predictions for the first update, scheduled for January 1, 2020, estimate that the threshold will be above \$51,000.^[2]
- The new rule permits employers to count nondiscretionary bonuses, incentives, and commissions toward up to 10 percent of the required salary level, so long as these amounts are paid on at least a quarterly basis.
- The new rule does not include any changes to the duties test. Remember, even if you pay your Workers more than this salary threshold, they will still be nonexempt and eligible for overtime pay if they fail to satisfy the duties test.

Although the final rule was published sooner than expected, there is good news. You will have until December 1, 2016, to come into compliance with the new rule - a window much larger than the anticipated 60 days.

If your business is effected by the new (and final) rule, consider the following options:

1. Give raises to nonexempt Workers so that they meet the new salary threshold if the cost of having to paying them overtime greater;^[3]
2. Reduce the number of hours these Workers work, perhaps by hiring more employees to spread the workload; or

¹ The rule also changes the annual compensation requirement for an exempt Highly Compensated Employee to \$134,004 annually.

² [FLSA Overtime Rule Resources Society for Human Resource Management, \(May 19, 2016, 3:25 P.M.\)](#)

³ [Michael Cardman, A 5-Point Action Plan for the New Overtime Rules from Someone Who Knows, Xpert HR Blog, \(March 18, 2016\)](#)

3. Use an hourly pay rate that is equal to the same weekly compensation as the Worker's salary.^[4]

For a look at the entire rule, [Click Here](#).

BY: TRACY L. BURTS, ESQ.
The Soto Law Group, P.A.
2400 E. Commercial Blvd., Suite 400
Fort Lauderdale, FL 33308
tracy@sotolawgroup.com
www.sotolawgroup.com
TEL: 954-567-1776
FAX: 954-567-1778



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**Office Locations: 2400 E. Commercial Boulevard, Suite 400, Fort Lauderdale, FL 33308
2901 Q. Street, NW Suite 2, Washington, D.C. 20007**

⁴ Id.