

## Management and Administrative Overtime Rule A Practical Guide

As of July 1, 2024, the Department of Labor (“DOL”) raised the minimum salary amount for executive, administrative, and professional employees (“Managers and Administrators”) to be exempt from overtime will increase from \$684 per week (\$35,358 per year) to \$844 per week (\$43,888 per year). The salary level for highly compensated employees (“HCEs”) will also be raised to increase to \$844 per week (\$132,964 per year). Moreover, six months later, on January 1, 2025, the salary level will increase to \$1,128 per week (\$58,656 per year) for EAPs, and to \$1,128 per week (\$151,164 per year) for HCEs. Thereafter, there will be automatic update of the salary levels every three years. The next update will take place on July 1, 2027.

While a number of lawsuits have been filed challenging the new salary levels, employers should continue to prepare for the new salary with the expectation that the rule will take effect as scheduled on July 1. Provided below are some suggestions to help prepare.

### 1. How Much I Pay My Managers and Administrative Employees?

The DOL set the minimum salary level for Managers and Administrators and HCEs, but did allow ten percent of the minimum salary requirement to include nondiscretionary bonuses, incentive payments and commissions as long as these forms of compensation are paid at least annually. A nondiscretionary bonus is one that is preset, like a fixed payment to a store manager for exceeding sales goals. Recognizing that in some years the bonus or commission may not be enough to meet the salary level, DOL allows the employer to make one final payment sufficient to achieve the required level. The payment must be made no later than the next pay period after the end of the year.

The salary levels are:

#### Managers and Administrators

| July 1, 2024                                | Bonus/Commissions                        | Salary                                      |
|---------------------------------------------|------------------------------------------|---------------------------------------------|
| \$844.00 per week<br>\$43,888.00 per year   | \$84,30 per week<br>\$4,388,80 per year  | \$759.60 per week<br>\$39,499.20 per year   |
| January 1, 2025                             |                                          |                                             |
| \$1,128.00 per week<br>\$58,656.00 per year | \$112.80 per week<br>\$5,865.60 per year | \$1,015.00 per week<br>\$52,790.40 per year |

#### HCEs

| July 1, 2024                               | January 1, 2025                            |
|--------------------------------------------|--------------------------------------------|
| \$844.00 per week<br>\$132,964.00 per year | 1,128.00 per week<br>\$151,164.00 per year |

## **2. Are Your Managers and Administrative Employees Exempt from Overtime If I Pay the Salary Level?**

Simply paying your Managers and Administrators the minimum salary level does not make them automatically exempt from overtime. The minimum salary level is only one part of the test to determine whether Managers and Administrators and HCEs are exempt from overtime. To fall within Managers and Administrators exemptions, an employee must also: (1) be paid a predetermined and fixed salary that is not subject to reduction for variations in the quality or quantity of work performed (the “salary basis test”); and (2) primarily perform executive, or administrative duties (the “duties test”). Unless your Managers and Administrators meet these other two tests, there is no need to evaluate whether or not to raise their salaries to meet the new salary level.

The salary basis test is straight forward—employer must pay a fixed salary with no adjustment for hours worked. This means that an employee is paid the same salary regardless of whether they work 30 hours or 50 hours in a week.

For a Manager to qualify under the duties test, the employee must.

- Manage the business or a recognized department or subdivision of the overall business, such as a store, warehouse, a flooring category, a sales team, a shift, and similar groups;
- Regularly oversee the work of at least two full-time employees; and
- Have the authority to hire and fire employees under their supervision, or play a significant role in decisions to hire, fire, and promote employees.

To qualify for the Administrative employee exemption, employees must perform non-manual work directly related to business operations. Administrative employees must exercise independent judgment on matters that materially affect the business.

For HCEs to be exempt from overtime, they must regularly perform at least one of the duties of an exempt Managers and Administrators.

Unless these employees meet these additional tests, it does not matter how much they are paid; and there is no need to make any adjustments in their pay as a result of the new salary level test.

## **3. Should You Raise Your Manager’s and Administrator’s Salaries?**

The next step is to identify those employees that are classified as exempt from overtime but currently earn less than \$844 per week (for second half of 2024) and \$1,128 per week (as of January 1, 2025). For Managers and Administrators who make less than the minimum salary limit, you need to evaluate the potential impact on your business by comparing the costs of raising an exempt employee's salary verses paying them overtime. For example, if an employee's salary is well below the new minimum and they rarely work overtime, it may be more cost-effective to reclassify them as non-exempt. Conversely, if an employee's salary is closer to the new proposed minimum or they frequently work overtime, you may want to consider raising

their salary to maintain the exemption. In evaluating the financial impact, you also need to consider the cost of tracking overtime and the impact on employee morale.

#### **4. Do You Need to Convert Nonexempt Manager's and Administrator's to Hourly Employees?**

The flooring dealer or contractor does not need convert nonexempt employees from a salary to an hourly employer. Instead, the effective hourly rate, called the “regular rate of pay,” needs to be determined so any overtime can be calculated. This simply requires you to divide the weekly salary by 40 hours to come up with the regular rate. That rate is then used to calculate the overtime rate. For example, the regular rate of pay for a nonexempt manager paid \$600 a week is \$15.00 ( $\$600 \div 40 \text{ hours} = \$15$ ). The employee's overtime rate is \$22.50 ( $\$15.00 \text{ regular rate} \times 1.5 = \$22.50$ ).

#### **5. Should You Adjust Your Nonexempt Manager's and Administrator's Salaries to Account for Overtime?**

Employees need to consider adjusting salaries to account for the overtime premium when you reclassify them as non-exempt. For example, if an employee is currently paid an annual salary of \$35,000 and averages 50 hours a week, their base salary has to be lowered to \$25,454.55 to account for \$9,545.45 paid for the anticipated ten hours a week of overtime.

#### **6. How Do You Prepare to Track Overtime?**

Employers will need to make and keep records of non-exempt employees' working time. Before converting employees to non-exempt status, it may require some planning, reconfiguration of workflow, and implementation of new processes or technology to ensure that you are accurately recording their work time. If you reclassify employees as non-exempt, ensure that managers are prepared to manage overtime costs and understand what hours are considered hours worked. For example, travel time and time spent performing preliminary or postliminary activities can be deemed compensable work time. You will need to track these hours to determine if an employee is owed overtime

Employers should also consider how existing timekeeping practices will apply to employees that are reclassified as nonexempt. For example, if employees reclassify work remotely or have a hybrid schedule, employers will need to ensure that such workers will be able to record time remotely, and the employer can verify the time is accurate.

#### **7. What Training Do You Need to Implement?**

Employees who are reclassified may be unfamiliar with timekeeping and other practices applicable to only nonexempt employees. Therefore, in addition to communicating the change, employers may consider training reclassified employees on timekeeping, hours scheduling, overtime approval, meal and rest breaks, and any other policies applicable only to nonexempt employees prior to the effective date of their reclassification. Managers of the reclassified employees may also need additional training to understand their obligations. Additional training

may include approving or denying overtime and ensuring hours are accurately tracked and reported.

### **8. Can You Use Comp Time Rather Than Pay Overtime?**

Unfortunately, an employer cannot offer comp time in lieu of overtime. Comp time is allowed only to employees who are on flexible work schedule.

### **9. What About Commissioned Employees or Those Paid at Piece-Work?**

The new salary level does not impact commissioned employees. A commissioned employee is exempt from overtime wages if:

- The employee works in a retail or service establishment;
- The employee's regular rate of pay is more than 1.5 times the minimum wage for each hour worked in a workweek where the employee works overtime; and
- More than half of the employee's total earnings in a representative period are commissions

The new salary levels also do not impact employees paid on a piece-work basis. Piece-work employees who work more than 40 hours per week need to be compensated for overtime.

### **10. What About State Law?**

Some states have their own rules on overtime exemptions. Generally, if state law is more protective, then state law must be followed. Currently, only a few states (Alaska, California, Colorado, New York, and Washington) have minimum salary requirements for exemption that exceed the federal limit of \$844 for the exemptions. State rules may also prohibit employers from using bonuses to satisfy part of the salary requirement. In addition, some states have different overtime requirements. For example, a number of states, such as California and Alaska, require overtime pay for any work over eight hours a day, while others, require overtime for working more than 10 (Florida and Oregon) or twelve (Colorado) hours a day. Therefore employers must check their state law to ensure they comply with state overtime requirements.

### **11. Is there a small business exemption?**

The overtime rules apply to most businesses. There is an exception for businesses that have an annual gross volume of sales of less than \$500.

## **Conclusion**

Although several cases have been filed challenging the new salary levels, employers should continue to prepare for July 1 compliance with the expectation that the rule will take effect as scheduled. The WFCA and Jones Walker are tracking the developments in these cases. In the meantime, flooring retailers and contractors need to be prepared for the salary level increase that takes effect July 1, 2024.

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