

## New Mexico employers should plan now for new overtime rules

Written by By Randy S. Bartell and Randi N. Johnson Montgomery & Andrews, PA, Employment Law Group  
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About 20,000 salaried “white-collar” employees in New Mexico might be eligible for overtime pay in 2017 when an amendment to the Fair Labor Standards Act takes effect the last day of this year.

In May, The U.S. Department of Labor published its final rule revising the FLSA’s overtime exemption regulations. The most significant change was to the minimum salary levels that salaried employees must be paid to be considered exempt from federal overtime requirements.

Going forward, employees who earn less than \$913 per week — or \$47,476 per year — will be considered nonexempt, and employers must pay them overtime at time and a half. This is a dramatic increase from the former minimum of \$455 per week (or \$23,660 annually), which DOL set in 2004.

The law affects a broad range of white-collar job classifications: executives, administrative personnel, learned professionals, creatives, and highly compensated employees. The duties associated with each of these positions are spelled out in the law, and employers must follow these rules for employees to qualify for the exemption.

Now is a good time for employers to prepare for this change by:

**Identifying** exempt employees whose annual salary falls below the \$47,476 threshold. The employer should conduct a cost analysis to determine whether it would be more expensive to pay those employees overtime than to increase their pay to the new minimum.

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**Creating** a compensation and benefits plan for each employee (except highly compensated employees) who will remain exempt. To bring employees to the new minimum salary, employers must consider whether to raise their base pay, give quarterly bonuses or commissions, or offer some combination of salary and bonuses. And they'll need to establish a new hourly rate for each employee reclassified as hourly.

**Determining** how the changes affect benefits such as paid leave accrual, profit sharing, and insurance. Some insurance packages might not apply to nonexempt employees.

**Determining** if a new timekeeping system is needed if nonexempt employees are still required to be available by phone and email away from work. Recording hours worked out of the office might require a new timekeeping system.

**Explaining** to newly nonexempt employees how the changes affect their work lives. As hourly employees, they must request overtime, keep track of their hours, take required meal breaks, and obey other policies just like other nonexempt employees.

**Communicating** why the change is happening so affected employees don't perceive reclassification as a demotion or punitive action. Messaging is critical, as the Equal Employment Opportunity Commission and employee lawyers might consider these communications to be evidence if compliance issues arise. Employers should be sensitive to their company's culture and employee morale when introducing the changes.

DOL plans to reset the minimum salary level for exempt classification every three years to the 40<sup>th</sup> percentile of weekly earnings of full-time salaried employees in the nation's lowest wage census region (the salaries of highly compensated employees will be reset to the 90<sup>th</sup> percentile). The next reset takes effect Jan. 1, 2020.

For more information, visit [dol.gov/whd/overtime/final2016/faq.htm](https://www.dol.gov/whd/overtime/final2016/faq.htm).

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