

# New DOL Exemption Regulations

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## EXEMPT

or

## NONEXEMPT EMPLOYEES

## Exempt vs. Non-exempt



- Misclassification is a frequent source of expensive class action litigation
- May lead to significant exposure in unpaid overtime wages, interest, and statutory and civil penalties



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## “White Collar” Exemptions



**Administrative**

**Executive**

**Professional**

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# DOL's New Regulations



On May 18, 2016, DOL announced the final rule:

1. Effective Date: December 1, 2016.
2. White Collar Exemption (for Executive, Administrative, and Professional workers)
  1. Increases salary requirement to \$913 per week or \$47,476 annually; and
  2. Non-discretionary bonuses and incentive payments (including commissions) may be used to satisfy up to 10% of the salary requirement.
3. Highly Compensated Employees – Increases salary requirement to \$134,004 annually (up from \$100,000).
4. Automatic updates to the salary levels every three (3) years.
5. No changes to the “duties test.”

Click here for more information: <https://www.dol.gov/whd/overtime/final2016/>

(See SHLC Blog Post: <http://suttonhague.com/u-s-dept-labor-announces-new-overtime-regulations-white-collar-workers/>)

# DOL's New Regulations



	Current Rule (until Dec. 2016)	Final Rule
<b>White Collar Salary Level</b>	\$455 weekly; \$23,660 annually	\$913 weekly; \$47,476 annually
<b>HCE Compensation Level</b>	\$100,000 annually	\$134,004
<b>Automatic Adjusting</b>	None	Every 3 years.
<b>Bonuses</b>	No provision to count nondiscretionary bonuses and commissions toward the standard salary level	Up to 10% of standard salary level from non-discretionary bonuses, incentive payments, and commissions for white collar workers.
<b>Standard Duties Test</b>	See WHD Fact Sheet #17A for a description of EAP duties.	No changes to the standard duties test.

## How does the DOL Final Rule interact with state law in Nevada?



### Background

- Employers must comply with federal laws.
- States, counties, and municipalities may pass laws that are “more protective” than federal law, which in this context means more beneficial to the employee.
- Employers must also comply with any “more protective” rules under state or local law.

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## Interaction of DOL Final Rule and Nevada State Exemptions



- Nevada
  - State exemptions are co-extensive with federal exemptions.
  - NAC 608.125(3): “The Commissioner will refer to 29 C.F.R. §§ 541.1 and 541.2 to determine if an employee is employed in a bona fide executive or administrative capacity.”
  - Exception:
    - NV’s professional exemption is met if the employee is licensed to practice in one of 45 specific fields or professions, or if the employee qualifies as a “creative professional” under federal law. *See Nev. Rev. Stat. § 608.0116.*

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## May I factor nondiscretionary bonuses and commissions into employee compensation to meet exemption salary threshold?



- For the first time, DOL regulations allow for nondiscretionary bonuses, commissions, and other incentive pay to make up a maximum of 10% of the exemption salary threshold.
  - Qualifying payments must be paid at least quarterly.
  - Annual bonuses will not count.
  - Weekly, biweekly, monthly, and quarterly bonuses or commission payments of up to \$1,187 may count toward exemption salary threshold of \$47,476.
  - “Catch-up Payments” are allowed if made within first pay period of subsequent quarter.

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## What are my options for implementing the new DOL Final Rule?



- Option #1: Raise exempt employee’s salary and keep as exempt under the new DOL regulations.
  - Increased cost due to higher salary
  - No loss in productivity (i.e., employee may work the same number of hours)
  - Employee will like the pay increase



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## What are my options for implementing the new DOL Final Rule?



- Option #2: Reclassify the employee as non-exempt at the employee's current salary (or switch to hourly), permit the employee to work the same hours, and pay overtime.
  - Increased cost due to obligation to pay overtime
  - No loss in productivity (i.e., employee may work the same number of hours)
  - Employee will like the pay increase (due to overtime pay)
  - Employer must track hours worked; increased administrative burden.

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## What are my options for implementing the new DOL Final Rule?



- Option #3: Reclassify the employee as non-exempt at the employee's current salary (or switch to hourly) and restrict or eliminate overtime hours.
  - No increased cost (i.e., employee's compensation does not change)
  - Loss in productivity (i.e., employee may have to cut back hours due to restriction on overtime hours)
  - Employee's pay will not increase or decrease
  - Employee will likely work fewer hours for the same pay.

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## What are my options for implementing the new DOL Final Rule?



- Option #4: Reclassify the employee as non-exempt at less than the employee's current salary (or switch to hourly) and permit overtime hours.
  - No increased cost (i.e., employee's total compensation does not change)
  - No loss in productivity (i.e., employee works same number of hours)
  - Employees will dislike the decrease in the base rate of pay

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## How can I manage issues that arise due to reclassification?



- Best Practices
  - Comply with Regular Rate Rules for nonexempt OT. <https://www.dol.gov/whd/regs/compliance/WH1262.pdf>.
  - With the change in the law, take the opportunity to review job descriptions, performance evaluations, and related policies.
  - Job descriptions should closely track exempt duties of 29 CFR 541 *et seq.* and DLSE Enforcement Manual, ch. 52-54.
  - Performance evaluations should center on exempt duties.
  - Update drop box policies regarding off-the-clock work, performance of non-exempt tasks.
  - Use attestation clause for reclassified employees.
  - Arbitration agreement with class action waiver

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