

PENNSYLVANIA DEPARTMENT OF LABOR & INDUSTRY ANNOUNCES NEW OVERTIME RULES NOW IN EFFECT



Earlier this year, the Pennsylvania Department of Labor and Industry (L&I) issued a rule to increase the minimum salary required to avoid overtime compensation for executive, administrative, and professional (EAP) workers was adopted.

The new minimum salary for Pennsylvania is \$780 per week (\$40,560 annually), effective January 1, 2021 and will exceed the required minimum salary federal threshold that became effective January 1, 2020. There are also differences in the Pennsylvania duties test definitions as well as the salary threshold. This could present issues for employers who must comply with both federal and state law. The following is a side-by-side comparison of the provisions.

Comparison of Federal and Pennsylvania Rules

Under both federal and state law, employees generally must be paid overtime for working more than 40 hours per week. There are several classes of employees who are exempt from this overtime pay requirement. In order to qualify for the exemption, employers generally must show that the employees perform certain executive, administrative or professional (EAP) duties and that the employees receive a minimum weekly salary.

Description	Federal	Pennsylvania	Comments
Minimum Salary	\$684 weekly (\$35,668 annually) for 2020	<ul style="list-style-type: none"> ▪ \$684 weekly (\$35,668 annually) for 2020; ▪ \$780 weekly (\$40,560 annually) for 2021; ▪ \$875 weekly (\$45,550 annually) for 2022 	There are no future adjustment mechanisms for federal rules; however, for PA, there are prescribed adjustment rules after 2022.
Treatment of Bonuses/Commissions	Up to 10% of the minimum salary to include nondiscretionary incentive compensation, bonuses, and commissions.	Up to 10% of the minimum salary to include nondiscretionary incentive compensation, bonuses, and commissions.	
Duties Test - General	Exempt workers must make more than the salary threshold as well as perform the duties outlined in the simplified duties test.	Exempt workers must make more than the salary threshold as well as perform the duties outlined in the simplified duties test; eliminates the prior use of both a short and long duties test for the EAP.	The update revises the duties tests used to qualify for the EAP exemptions with the purpose as stated to be “more consistent with current federal regulations interpreting the Fair Labor Standards Act (FLSA).”

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Description	Federal	Pennsylvania	Comments
Exceptions to Duties Test	Teachers, lawyers, and doctors can qualify as exempt professionals without having to meet any minimum salary	Never included these exceptions and the new rules do not provide for them	The absence of these state exceptions was often not a problem for employers in the past, given that PA's salary thresholds were low; the new rules raise the required minimum salary <u>for all EAP workers</u> to keep the exemption for PA; employers must either increase salaries or pay overtime.
Computer Professionals Paid on an Hourly Basis	Exempt for some of these workers	No such provision	Creates compliance differences
Highly Compensated Employees	Effective definitions	No such provision	Creates compliance differences
Paid on a Salary Basis Definition	Specifics provided including, how to treat deductions from salary under the FLSA	No such definition	Creates compliance differences
Fluctuating Work Week Method for Calculating Overtime	New updates authorized to facilitate this method	Not addressed	Creates compliance differences

Employer Action Plan

Pennsylvania employers would have to comply with both federal and the separate Pennsylvania rules that will eventually create additional liabilities and other obligations for employers.

Each employer will have to address these issues for future budgets and planning. A detailed audit of both the FLSA and the Pennsylvania rules would be in order to closely examine the exemptions available for their employees. The results will then dictate an action plan once positions or other issues are identified.

Most employers did complete an audit when the updated FLSA rules went into effect. Similar action plans would be in order including raising salaries of employees, reassigning work, eliminating/curtailing overtime, and tracking and paying overtime as needed.

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