

# Important Legal Update

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## THE NEW OVERTIME RULE AND THE TRUCKING INDUSTRY

On May 18, 2016, the US Department of Labor released its much-anticipated rule that raises the white collar overtime exemption threshold under the Fair Labor Standards Act (FLSA). The new regulations take effect on December 1, 2016.

The FLSA provides an overtime exemption for commercial drivers of trucks and buses because Congress delegated their wage and hour regulation to the Department of Transportation. Therefore, there is a Motor Carrier Exemption under the FLSA for employees who are:

1. Employed by a motor carrier or motor private carrier, as defined in 49 U.S.C. Section 13102;
2. Drivers, driver's helpers, loaders, or mechanics whose duties affect the safety of operation of motor vehicles in transportation on public highways in interstate or foreign commerce; and
3. Not covered by the small vehicle exception (must be over 10,000 pounds loaded or unloaded).

The motor carrier exemption stays intact under the new overtime rule. Drivers must continue to adhere to DOT's hours-of-service and log-keeping regulations instead of FLSA rules.

Next, employees whose jobs are governed by the FLSA overtime requirements are classified as either "exempt" or "nonexempt." Nonexempt employees are entitled to overtime pay. Exempt employees are not. Certain "white collar" salaried employees are exempt from receiving overtime pay, regardless of the number of hours they work per week, if they meet the minimum salary threshold and perform exempt job duties.

There are three typical categories of exempt job duties, called "executive," "professional," and "administrative."

Job duties are exempt executive job duties if the employee:

1. regularly supervises two or more other employees, and also
2. has management as the primary duty of the position, and also,
3. has some genuine input into the job status of other employees (such as hiring, firing, promotions, or assignments).

The job duties of the traditional "learned professions" are exempt. These include lawyers, doctors, engineers, dentists, teachers, architects, and clergy.

The most elusive and imprecise of the definitions of exempt job duties is for exempt "administrative" job duties. The Regulatory definition provides that exempt administrative job duties are:

- a) office or nonmanual work, which is
- b) directly related to management or general business operations of the employer or the employer's customers, and
- c) a primary component of which involves the exercise of independent judgment and discretion about
- d) matters of significance.

The revised overtime pay regulations, which are estimated to affect at least 4.2 million American workers, will increase the salary threshold for the overtime exemption from \$455 a week (\$23,600 annually) to \$913 a week (\$47,476 annually).

Businesses will need to start tracking hours for exempt salaried employees who are at or below the \$47,476 threshold. In response, exempt salaried employees must either (1) be paid time-and-a-half for overtime work, (2) have salaries raised above the new threshold, (3) limit hours to 40 per week, or (4) some combination of the above.



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