

FAIR LABOR STANDARDS ACT

Old, New, Still Dangerous

Tennessee Association of School Personnel Administrators

November 7, 2019

Today's Agenda



- Introduction
- Classifying Employees
- Paying Employees
- School Issues
- Enforcement

The goal of this presentation is to
promote compliance with the
Fair Labor Standards Act.

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“Gentlemen, we will chase perfection,
and we will chase it relentlessly, knowing
all the while we can never attain it. But
along the way, we shall catch
excellence.”

Vince Lombardi

Compliance Assistance

Department of Labor
PowerPoint Presentations

<https://www.dol.gov/WHD/flsa/>



Wage and Hour Division

[DOL Home](#) > [WHD](#) > Compliance Assistance - Wages and the Fair Labor Standards Act (FLSA)[For Workers](#)[For Employers](#)[For States](#)[How to File a Complaint](#)[News Room](#)[About WHD](#)[Contact Us](#)[Email Alerts](#)

Compliance Assistance - Wages and the Fair Labor Standards Act (FLSA)

Overview

The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

- [FLSA Minimum Wage](#): The federal minimum wage is \$7.25 per hour effective July 24, 2009. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.
- [FLSA Overtime](#): Covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay. There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.
- [Hours Worked \(PDF\)](#) : Hours worked ordinarily include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace.
- [Recordkeeping \(PDF\)](#) : Employers must display an official poster outlining the requirements of the FLSA. Employers must also keep employee time and pay records.
- [Child Labor](#): These provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being.

On October 7, 2019, the U.S. Department of Labor announced a proposed rule for tip provisions of the Fair Labor Standards Act (FLSA) implementing provisions of the Consolidated Appropriations Act of 2018 (CAA). For more information, please visit: <https://www.dol.gov/whd/flsa/tipcreditnprm.htm>.

On April 1, 2019, the U.S. Department of Labor announced a proposed rule to revise and clarify the responsibilities of employers and joint employers to employees in joint employer arrangements. For more information, please visit: www.dol.gov/whd/flsa/jointemployment2019.

General Guidance

- [Handy Reference Guide to the FLSA](#)
 - [Guía Práctica Referente a la Ley de Normas Justas de Trabajo](#)
- [Fact Sheets](#)

- [Thai Version \(PDF\)](#)
- [Hmong Version \(PDF\)](#)
- [Vietnamese Version \(PDF\)](#)
- [Korean Version \(PDF\)](#)
- [Polish Version \(PDF\)](#)
- [Haitian Creole Version \(PDF\)](#)
- [Additional FLSA Posters](#)

Interpretive Guidance

- [Administrator Interpretations](#)
- [Opinion Letters](#)
- [Field Handbook](#)
- [Field Bulletins](#)

E-tools

- The [Coverage and Employment Status Advisor](#) helps identify which workers are employees covered by the FLSA.
- The [Hours Worked Advisor](#) provides information to help determine which hours spent in work-related activities are considered FLSA "hours worked" and therefore must be paid.
- The [Overtime Security Advisor](#) helps determine which employees are exempt from the FLSA minimum wage and overtime pay requirements under the Part 541 overtime regulations.
- The [Overtime Calculator Advisor](#) computes the amount of overtime pay due in a sample pay period based on information from the user.
- The [Child Labor Rules Advisor](#) answers questions about the FLSA's youth employment provisions, including at what age young people can work and the jobs they can perform.
- The [Section 14\(c\) Advisor](#) helps users understand the special minimum wage requirements for workers with disabilities.

Presentations

- [Comprehensive FLSA Presentation \(Microsoft® PowerPoint®\)](#)
- [Executive, Administrative, and Professional Exemption Presentation \(Microsoft® PowerPoint®\)](#)

Applicable Laws and Regulations

- **Law**
 - [The FLSA \(PDF\)](#)
- **Regulations**
 - [29 CFR Chapter V](#)

comprehensive (2).ppt [Compatibility Mode] - PowerPoint

Debra Owen

Share

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Text DirectionAlign TextConvert to SmartArtParagraph

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1 FAIR LABOR STANDARDS ACT

2 Major Provisions

- Minimum Wage
- Maximum Hours
- Child Labor
- Unemployment Insurance

3 Employment Relationship

In order for the FLSA to apply, there must be an employment relationship between the "employer" and the "employee"

4 Coverage

Over 2 million workers in more than 2 million workplaces protected or covered by the FLSA, including the federal and most States of the U.S. Department of Labor

5 Coverage

- Enterprise Coverage
 - Businesses with annual sales of at least \$1 million
 - Businesses with at least 20 employees
- Government Contractors
 - Businesses that contract with the federal government

6 Enterprise Coverage

Enterprise coverage may apply to a business if:

- It engages in commercial activities that must answer the federal government's demand for goods or services, and
- It has at least 20 employees.

7 Enterprise Coverage

Enterprise Coverage in Non-Profit Organizations

- A non-profit's charitable activities are not solely governmental activities and are not covered under the FLSA.
- A non-profit's activities performed for a business purpose, however, are covered by the FLSA to the extent the "20" number is met.
- Entities who conduct performance in a business purpose.

1 2 3 4 5 6 7

Click to add notes

FAIR LABOR STANDARDS ACT



FAIR LABOR STANDARDS ACT



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

dol.gov/whd
1-866-487-9243

Slide 1 of 73

NotesComments

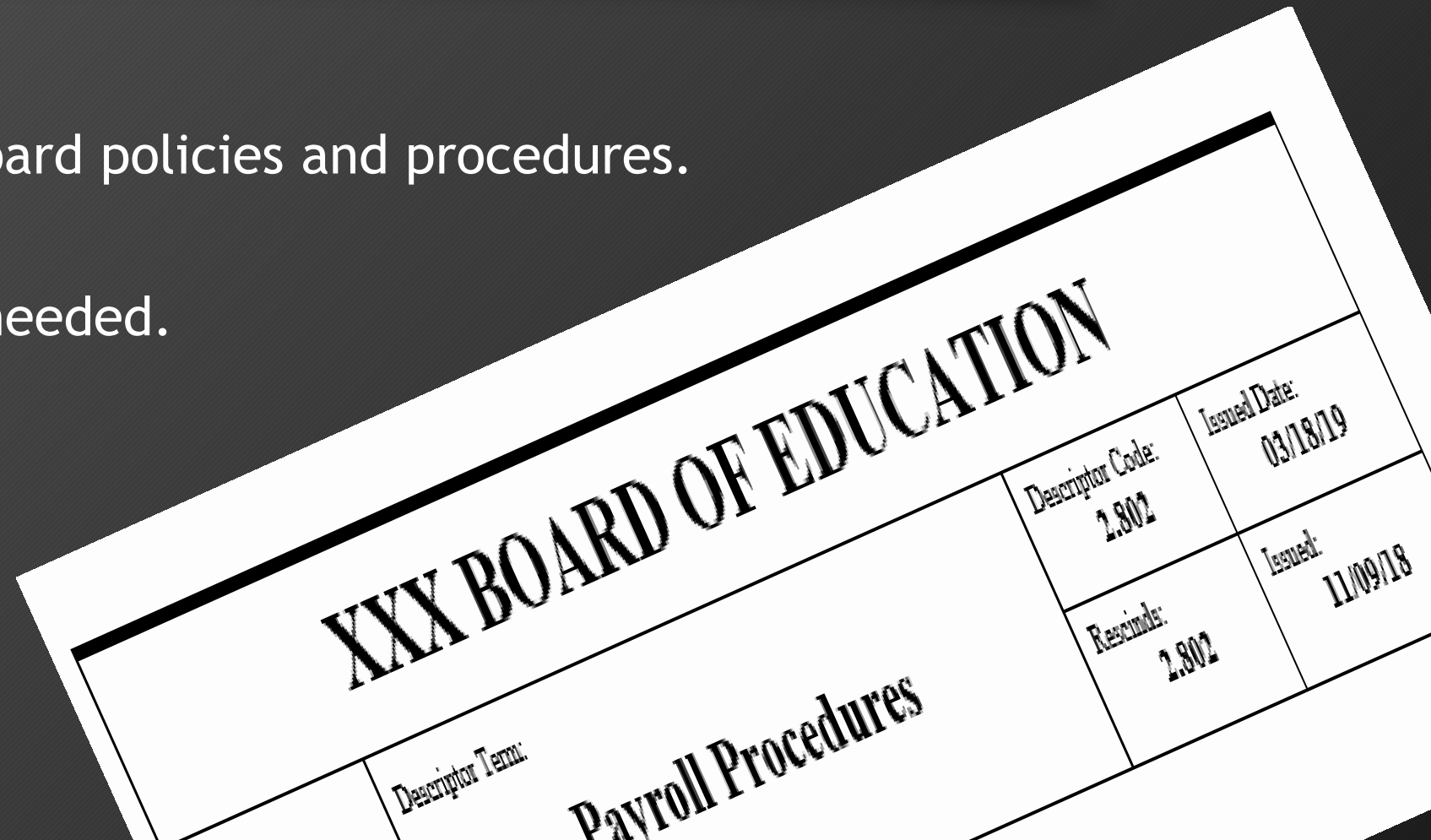
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Links

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Board Policy

- Remember to check Board policies and procedures.
- Review and update if needed.



FLSA: Two Basic Principles

- *Classify workers correctly.*
- *Pay employees properly.*

Classifying Employees Correctly

- Workers are employees or independent contractors.
- Every employee is EXEMPT or NON-EXEMPT.
- Not all “salaried” employees are exempt.
- Titles do not control.

Most Common Exemptions

- Executive Employees
- Administrative Employees
- Professional Employees
- Outside Sales Employees
- Computer Employees

Three Tests for Exemption

- *Salary level:* The amount of salary paid must meet a minimum specified amount.
- *Salary basis:* The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed.
- *Duties:* The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulation.

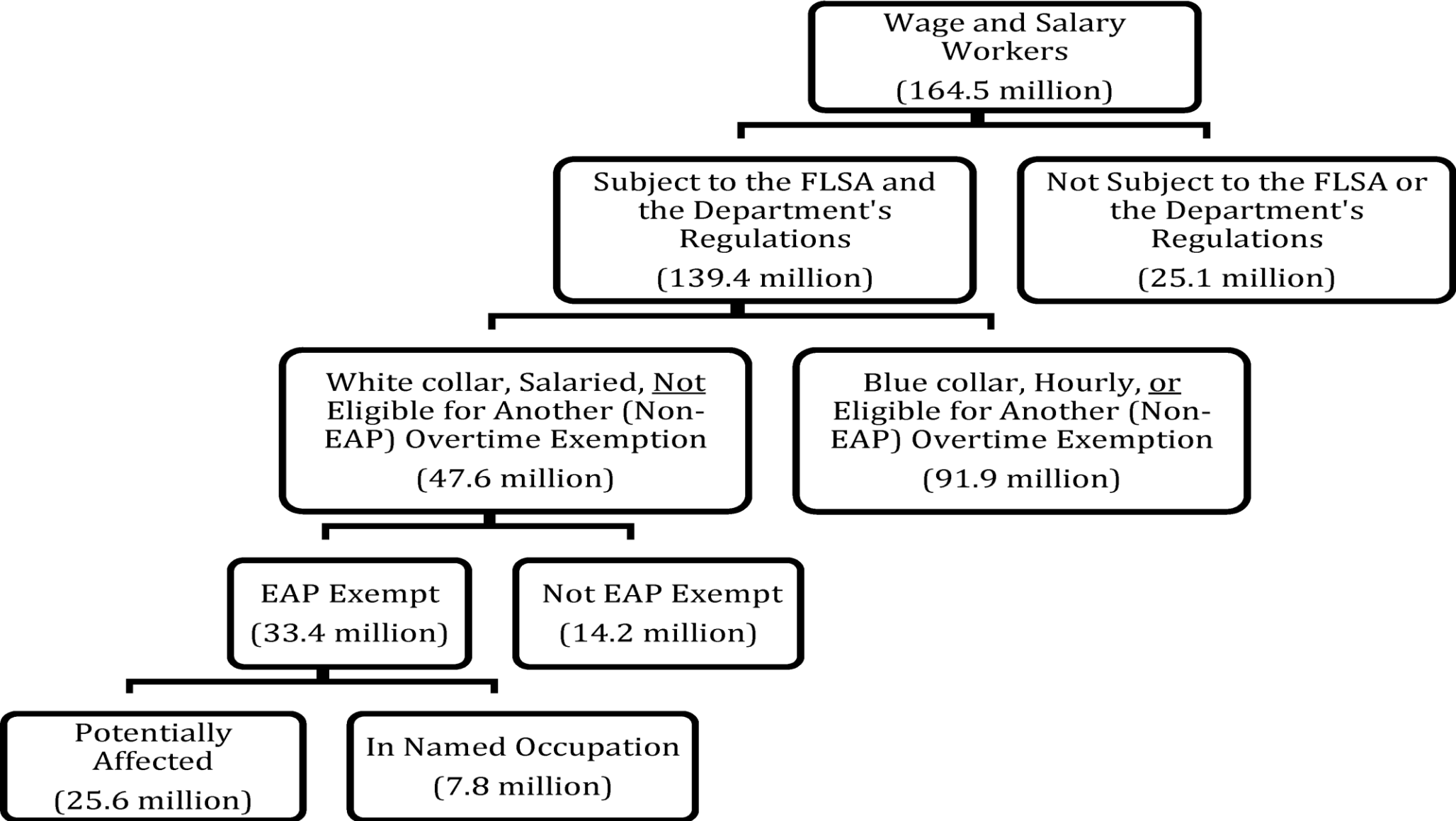
Salary Level - “Old”

- For most employees, the level required for exemption is not less than \$455 per week
- Must be paid “free and clear”
- The \$455 per week may be paid in equivalent amounts for periods longer than one week:
 - Biweekly: \$910
 - Semimonthly: \$985.83
 - Monthly: \$1,971.66

Salary Level - “New”

- Effective January 1, 2020
- For most employees, the salary level required for exemption is not less than \$684 per week
- Must be paid “free and clear”
- The \$684 per week may be paid in equivalent amounts for periods longer than one week:
 - Biweekly: \$1,368
 - Semimonthly: \$1,482
 - Monthly: \$2,964

Figure 1: Flow Chart of FLSA Exemptions and Estimated Number of Potentially Affected Workers



Compliance Options

- No change (no overtime hours)
- Raise salary
- Pay overtime above salary
- Adjust hours worked, reorganize workloads, spread work hours
- Adjust regular and overtime pay to approximate current salary

With caution, see...



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Guidance for Non-Profit Organizations
on Paying Overtime under
the Fair Labor Standards Act

May 18, 2016

Highly Compensated Test - “Old”

- Total annual compensation of at least \$100,000
- At least \$455 per week paid on a salary or fee basis
- Perform office or non-manual work
- Customarily and regularly perform any one or more of the exempt duties identified in the standard tests for the executive, administrative or professional exemptions

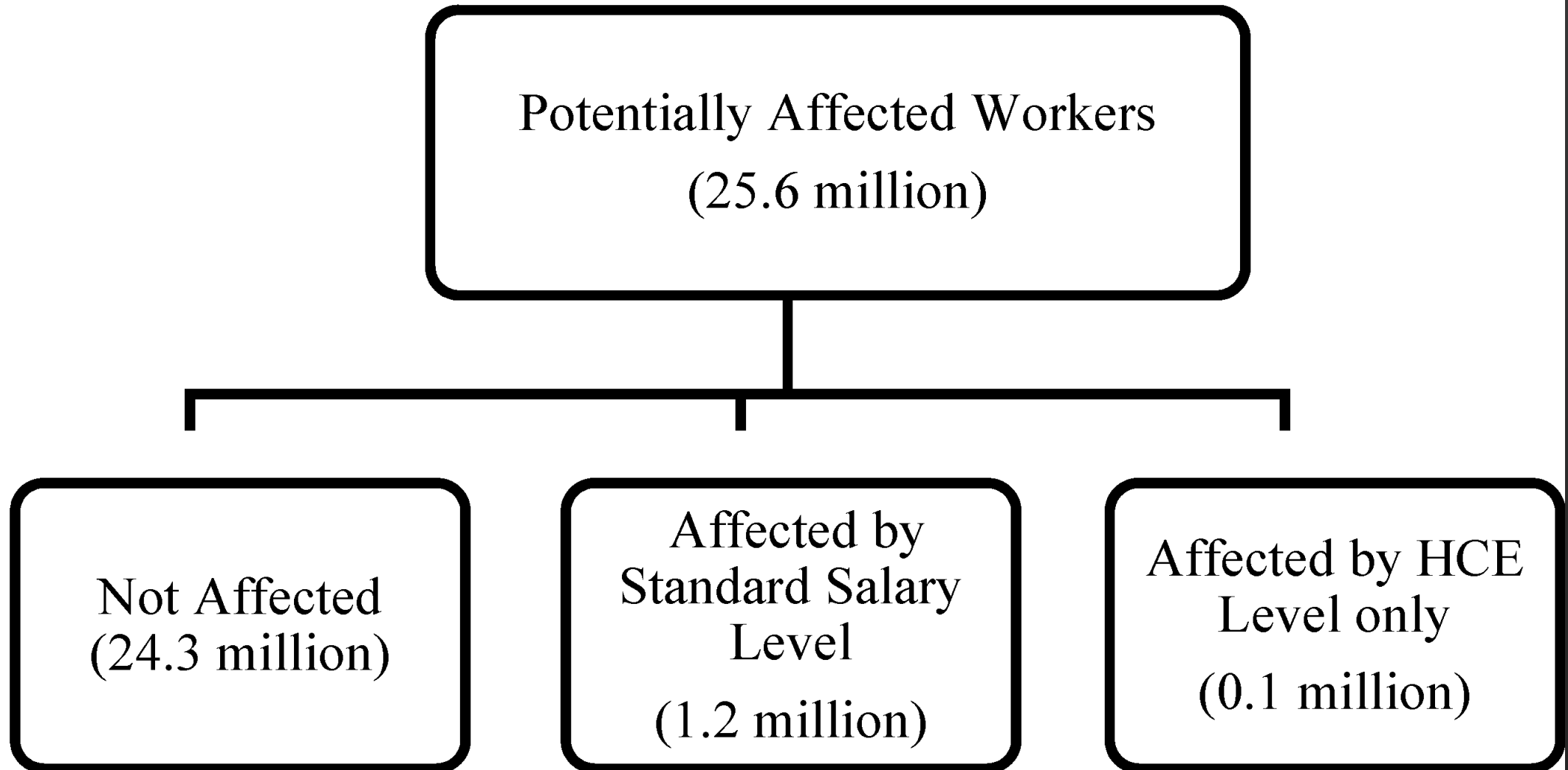
Highly Compensated Test - “New”

- Total annual compensation of at least \$107,432
- At least \$684 per week paid on a salary or fee basis
- Perform office or non-manual work
- Customarily and regularly perform any one or more of the exempt duties identified in the standard tests for the executive, administrative or professional exemptions

Highly Compensated Test - “Old & New”

- Total annual compensation may include commissions, non-discretionary bonuses and other nondiscretionary compensation earned during a 52-week period.
- Total annual compensation does not include board, lodging and other facilities, payments for medical insurance, payments for life insurance, contributions to retirement plans and the cost of other fringe benefits.

Figure 2: Number of Affected Workers in Year 1





Wage and Hour Division



[DOL Home](#) > [WHD](#) > [Final Rule: Overtime Update](#)

Final Rule: Overtime Update

On September 24, 2019, the U.S. Department of Labor announced a final rule to make 1.3 million American workers newly eligible for overtime pay.

The final rule updates the earnings thresholds necessary to exempt executive, administrative and professional employees from the Fair Labor Standards Act's (FLSA) minimum wage and overtime pay requirements, and allows employers to count a portion of certain bonuses/commissions towards meeting the salary level. The new thresholds account for growth in employee earnings since the thresholds were last updated in 2004.

In the final rule, the Department is:

- raising the "standard salary level" from the currently enforced level of \$455 per week to \$684 per week (equivalent to \$35,568 per year for a full-year worker);
- raising the total annual compensation requirement for "highly compensated employees" from the currently enforced level of \$100,000 per year to \$107,432 per year;
- allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, in recognition of evolving pay practices; and
- revising the special salary levels for workers in U.S. territories and the motion picture industry.

The final rule is effective on January 1, 2020.



Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- Must be paid the full salary for any week in which the employee performs *any* work
- Need not be paid for any workweek when no work is performed

Salary Basis Test - “Old & New”

- Up to ten percent of the required salary may be satisfied by payment of nondiscretionary bonuses, incentives and commissions, that are paid annually or more frequently.
 - Not applicable to highly compensated employees.
- One final payment may be made no later than the next pay period after the end of the year to achieve the salary level.

Deductions From Salary

- An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the businesses
- If the employee is ready, willing and able to work, deductions may not be made for time when work is not available

Permitted Salary Deductions

- Seven exceptions from the “no pay-docking” rule:
 1. Absence from work for **one or more full days** for personal reasons, other than sickness or disability
 2. Absence from work for **one or more full days** due to sickness or disability if deductions made under a bona fide plan, policy or practice of providing wage replacement benefits for these types of absences
 3. To offset any amounts received as payment for jury fees, witness fees, or military pay

Permitted Salary Deductions

- Seven exceptions from the “no pay-docking” rule:
 4. Penalties imposed in good faith for violating safety rules of “major significance”
 5. Unpaid disciplinary suspension of **one or more full days** imposed in good faith for violations of workplace conduct rules
 6. Proportionate part of an employee’s full salary may be paid for time actually worked in the first and last weeks of employment
 7. Unpaid leave taken pursuant to the Family and Medical Leave Act

Safe Harbor Policy

Deductions from Salaries

The District compensates certain exempt executive, administrative, and professional employees on a guaranteed salary basis. Deductions from these salaries may only be made...It is the District's policy not to make improper salary deductions based on variations in quantity or quality of work done.

Any salaried exempt employee who believes that an improper deduction was made from his/her salary may file a written complaint...and the District will ensure that such deduction is not made in the future from any exempt employee's salary.

There will be no retaliation against the employee for filing a complaint under this section.

Duties Tests

- To qualify for exemption, an employee's “primary duty” must be the performance of exempt work.
- “Primary duty” means the principal, main, major or most important duty that the employee performs.
- Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Duties Tests

- Factors to consider when determining the **primary duty** of an employee include, but are not limited to,
 - the relative importance of the exempt duties as compared with other types of duties;
 - the amount of time spent performing exempt work;
 - the employee's relative freedom from direct supervision;
 - and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

Duties Tests

- Primary Duty
 - Employees who spend more than 50% of their time performing exempt work will generally satisfy the primary duty requirement
 - However, the regulations do not *require* that exempt employees spend more than 50% of time performing exempt work

Concurrent Duties

- Concurrent performance of exempt and nonexempt work does not automatically disqualify an employee from exemption.
- Exempt executives generally decide when to perform nonexempt duties and remain responsible for the success or failure of business operations.
- Nonexempt employees generally are directed by a supervisor to perform the exempt work or perform the exempt work for defined time periods

Executive Duties

- **Primary duty** is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight

Two or More

- The phrase “two or more other employees” means two full-time employees or the equivalent
- Full-time generally means 40 hours per week
- The supervision of the same employees can be distributed among two or more exempt executives, but the hours worked by an employee cannot be credited more than once

Administrative Duties

- Whose **primary duty** is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- Whose **primary duty** includes the exercise of discretion and independent judgment with respect to matters of significance.

Discretion and Independent Judgment

- The comparison and evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered
- Must be exercised with respect to “matters of significance,” which refers to the level of importance or consequence of the work performed
- Decisions and recommendations may be reviewed at a higher level and, upon occasion, revised or reversed

Academic Administrative Functions

- Educational establishments.
 - Compensated on a salary or fee basis at a rate of not less than \$684 per week exclusive of board, lodging, or other facilities; or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed
 - Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

*Effective January 1, 2020

Academic Administrative Functions

- Include:
 - Superintendent;
 - Assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program;
 - Principal and any vice-principals responsible for the operation of an elementary or secondary school;
 - Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements;
 - Other employees with similar responsibilities.

Academic Administrative Functions

- Does not include
 - Jobs relating to building management and maintenance,
 - Jobs relating to the health of the students,
 - Academic staff such as social workers, psychologists, lunch room managers or dietitians.
- Some personnel in these positions *may* be exempt under other rules.

Professional Duties

- **Primary duty** is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction
- **Primary duty** is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor

Field of Science or Learning

- Occupations with recognized professional status, as distinguished from the mechanical arts or skilled trades
- Include any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed.

Teachers

- Exempt teachers include, but are not limited to:
 - Regular academic teachers;
 - Teachers of kindergarten or nursery school pupils;
 - Teachers of gifted or disabled children;
 - Teachers of skilled and semi-skilled trades and occupations;
 - Teachers engaged in automobile driving instruction;
 - Aircraft flight instructors;
 - Home economics teachers;
 - Vocal or instrumental music instructors.

Teachers

- May include licensed and non-licensed employees.
- Salary requirements do not apply to teaching professionals.

Computer Related Occupations

Primary duty is:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications
- The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation, or modification of computer programs related to machine operating systems
- A combination of the above requiring the same level of skills.

Computer Related Occupations

- The employee must be compensated on a salary or fee basis at a rate of not less than \$684* per week.

*Effective January 1, 2020

Proposed “New”: Joint Employer Status

- Joint employers are jointly and severally liable for the employee's wages.
- Four-factor test: Does the potential joint employer actually...
 - Hire or fire the employee;
 - Supervise and control the employee's work schedules or conditions of employment;
 - Determine the employee's rate and method of payment; and
 - Maintain the employee's employment records.

Paying Employees Properly



- *Minimum Wage*
- *Overtime*

Minimum Wage

- At least \$7.25 per hour for all hours worked in the workweek.
- Paid “free and clear,” with limited exceptions:
 - Deductions for the employees’ share of taxes from their gross pay
 - Deductions authorized by the employee such as union dues, insurance premiums, and voluntary contributions to charitable, athletic and social organizations.
 - Deductions under a lawful garnishment order, wage attachment, trustee process, or bankruptcy, so long as the employer derives no profit or benefit from the transaction.

Illegal Deductions

- Deduction is for item considered primarily for the benefit or convenience of the employer; **and**
- The deduction reduces employee's earnings below required minimum wage
- Examples of illegal deductions
 - Tools used for work
 - Damages to employer's property
 - Financial losses due to clients/customers not paying bills

Suffered or Permitted

Work not requested but suffered or permitted is work time!

Hours Worked: Issues

- Suffered or Permitted
- Waiting Time
- On-Call Time
- Meal and Rest Periods
- Training Time
- Travel Time
- Sleep Time

Overtime Pay

- One and one-half times the regular rate of pay for all hours worked over forty in a workweek

Proposed “New”: Calculation of Regular Rate

- Calculation of the regular rate may exclude:
 - Cost of wellness programs, onsite specialist treatment, gym access, fitness classes
 - Cost of employee discounts on retail goods and services;
 - Payments for unused paid leave, including paid sick leave;
 - Reimbursed expenses, even if not incurred “solely” for the employer’s benefit;
 - Reimbursed travel expenses under conditions specified in regulation
 - Discretionary bonuses;
 - Costs of benefit plans, including accident, unemployment, and legal services;
 - Tuition reimbursement programs or repayment of educational debt.
- Clarification about other forms of compensation such as payment for meal periods or “call back” pay

Compensatory Time

- A way to pay overtime to public employees
- Earned at *time and one-half*
- Maximum comp hours = 240
- Agreement or recorded understanding required

Errors In Pay Policy

Review Your Paycheck Statement

We make every effort to ensure our employees are paid correctly and in compliance with all applicable state and federal laws....record correctly all work time and review your paychecks promptly to identify and to report all errors...we promptly will make any correction that is necessary. Please review your paycheck statement...any improper deductions or your pay does not accurately reflect all hours worked, you should report your concerns to a supervisor immediately....

School Issues

- *“Off-the-clock”*
- Substitute Teachers
- Coaches
- Dual Jobs
- Volunteers
- Field Trips
- Child Labor
- Trainees

Child Labor Provisions

Generally:

- Limitations on employment under 14
- Restrictions on hours of work for minors under 16
- Lists of hazardous occupations that are too dangerous for minors to perform

Enforcement

▶ DOL/WHD

- Investigations
- Lawsuits
- Injunctive relief
- Back wages and liquidated damages

▶ PRIVATE LAWSUITS

- Back wages, liquidated damages, attorney's fees, and costs
- Collective actions

▶ DOJ

- Criminal prosecution and civil money penalties

2016 WL 7471318
United States District Court, N.D. Mississippi,
Greenville Division.
LeShaun MCWRIGHT, Plaintiff
v.
GREENVILLE PUBLIC SCHOOL DISTRICT,
Defendant
NO. 4:15-CV-00106-DMB-JMV
Signed 12/28/2016

Civil Money Penalty Inflation Adjustments

Type of Violation	Statutory Citation	CFR Citation	Maximum Civil Monetary Penalty on or before 1/23/2019	Maximum Civil Monetary Penalty on or after 1/24/2019
Homeworker: Violation of recordkeeping, monetary, certificate or other statutes, regulations or employer assurances.	29 USC 211(d)	29 CFR 530.302	\$1,026	\$1,052
Child labor: (1) Violation of child labor standards (sec 212 or 213(c));	29 USC 216(e)(1)(A)(i)	29 CFR 570.140(b)(1) and 29 CFR 579.1(a)(1)(i)(A)	\$12,529	\$12,845
(2) Violation of child labor standards (sec 212 or 213(c)) that causes the serious injury or death of a minor;	29 USC 216(e)(1)(A)(ii)	29 CFR 570.140(b)(2) and 29 CFR 579.1(a)(1)(i)(B)	\$56,947	\$58,383
(3) Willful or repeated violation of child labor standards (sec 212 or 213(c)) that causes the serious injury or death of a minor	29 USC 216(e)(1)(A)(ii)	29 CFR 570.140(b)(2) and 29 CFR 579.1(a)(1)(i)(B)	\$113,894	\$116,766
(4) Repeated or willful violation of section 206 or 207.	29 USC 216(e)	29 CFR 579.1(a)(2)	\$1,964	\$2,014
Minimum Wage and Overtime: Repeated or willful violation of section 206 or 207.	29 USC 216(e)(2)	29 CFR 578.3(a)	\$1,964	\$2,014

Miscellaneous...

- Insurance
- Class Action Waivers
 - Arbitration
- Personal Liability
 - Circuits are split.
 - 6th Circuit - Probably not.

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Thanks for listening!

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- *Receipt of this training and/or these training materials does not create an attorney-client relationship.*