

Department of Labor New Rules: Changes in Exempt and Non-Exempt Positions

By Mark Hernandez

This article is a basic summary from the **Department of Labor (DOL)** updated website regarding new rules on **Fair Labor Standards Act (FLSA)**. Understandably, local programs may have much confusion and anxiety that these new rules might significantly impact how local programs pay their employees. If you need financial technical assistance on this subject or other financial grant related topics, please contact Mark Hernandez at mhernandez@taasa.org or (512) 474-7190.

On May 16, 2016, the DOL revised its new rules for the minimum wage and overtime pay protections of the (FLSA). The following revisions are for **executive, administrative, and professional (EAP)** workers and **highly compensated employees** (HCE's) and will be implemented December 1, 2016:

1. The standard salary level at the 40th percentile of earnings of full-time salaried workers will be in the lowest-wage Census Region, currently the South, which is **\$913** per week or **\$47,476** annually for a full-year EAP worker.
2. The total annual compensation requirement for **highly compensated employees** (HCE's) will be subject to a **minimal duties test** (performing office or non-manual work) to the annual equivalent of the 90th percentile of full-time salaried workers nationally, which is **\$134,004**.
3. The salary and compensation levels will be automatically updated every three years, in order to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.

DOL Automatic Updates:

DOL established a mechanism to automatically update the standard salary level and HCE compensation level requirements every three (3) years, in order to ensure both required levels continue to provide useful and effective tests for exemption. DOL will publish all updated rates in the Federal Register at least 150 days before their effective date and also post them on the Wage and Hour Division's website.

The standard salary level will be updated to maintain a threshold equal to the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region. The HCE compensation level will be updated to maintain the threshold equal to the 90th percentile of annual earnings of full-time salaried workers nationally.

Grant Concerns:

How does the FSLA new standard salary level affect local programs? Employees that were exempt employees must now meet the new threshold of **\$913** per week or **\$47,476** annual salary level and must clearly perform **executive, administrative, and professional (EAP)** duties, in order to be become exempt employees. Employees currently considered exempt employees that **do not** meet the new standard salary level will become nonexempt employees and **will accrue paid overtime**. This means current exempt workers with salaries ranging from **\$455 - \$912** per week or **\$23,660 - \$47,475** annually will become nonexempt workers. Local programs will incur additional costs, because of the new standard salary level.

Generally, local programs **do not** have employees that meet HCE definition that are paid at the **\$134,004** threshold. The definition for HCE is the **minimal duties test** of performing office or non-manual work. HCE's with salaries less than **\$134,003** will be nonexempt if they are not clearly performing EAP duties. HCE's with salaries ranging from **\$100,000 - \$134,003** annually will become nonexempt employees and **will accrue paid overtime**.

This change may also impact local programs' grant reporting for professional, nonprofessional, and nonexempt staff. For grant purposes, the term "**nonprofessional employee**" shall have the same meaning

as "**nonexempt employee**," under FLSA. It is not clear if the new standard salary level will change how local programs will report professional staffs that are considered nonexempt employees.

Reporting Time and Effort:

The Code of Federal Regulations (CFR) 2 CFR 200.430 set standards for documentation of personnel expenses to reasonably reflect the total activity for which the employee is compensated by the non-federal entity, not exceeding 100% of compensated activities. Examples of non-federal entities include local units of government, nonprofit organizations and educational institutions.

Grant employees may report their time and effort the following ways:

- Employees that are expected to work solely on a single federal award or cost objective may use semi-annual certifications to support salaries and wages.
- Employees working on multiple activities or cost objectives must report a distribution of their salaries or wages and are required to use a **Personnel Activity Report** (PAR) for supporting documentation. The PAR should be monthly and should account for 100% of the time compensated.

FSLA Reporting Requirements:

Nonexempt employees must also report the total number of hours worked each day, in compliance with Department of Labor regulations, as per requirements of FLSA (29 CFR Part 516). Both grant and non-grant employees are required to meet FSLA reporting requirements.