



**Dominion Payroll**<sup>®</sup>  
*Empowering Your Business*

# HR COMPLIANCE UPDATE: OVERTIME RULING

## FREQUENTLY ASKED QUESTIONS

Below you'll find a compiled list of frequently asked questions (FAQs) to provide clarity on any remaining question you may have:

### FAQs

▶ **Is overtime based on 35 hours a week or 40 hours a week?**

The overtime threshold is based on the hours worked in excess of 40 hours within a 7 day workweek.

▶ **What are the benefits of being exempt vs non-exempt?**

The benefits of being exempt vs. non-exempt depend on factors such as pay structure, job autonomy, overtime eligibility, and labor protections. Exempt roles often offer greater flexibility and professional development opportunities, while non-exempt roles provide more immediate compensation for hours worked and stronger labor protections.

▶ **What is the best way to keep track of overtime hours if an employee is salaried non-exempt?**

The idea behind classifying employees as salaried non-exempt is that for the weeks where they work 40 hours or fewer, you can essentially issue the "regular weekly pay," without regard to the hours worked. However, this has a tendency to make both the employer and employees lackadaisical about tracking time worked. This pay classification still requires strict timekeeping, just as for all non-exempt employees, in order to determine if any overtime was worked in a workweek so you can pay accordingly.

In the event that there is a dispute, the burden of proof will be on the employer to prove that the employee was paid for all hours worked (including time and one-half for overtime), so they'll want to ensure that all their time is carefully tracked. This means making timekeeping entries when work begins and ends, as well as complying with – and tracking – any state-mandated meal or rest period requirements.

▶ **If you classify an employee as non-exempt, can you have a salary level below these thresholds, so long as you pay them for the overtime?**

Yes. If an employee is a salaried non-exempt employee that is receiving overtime pay at 1.5x their hourly rate, the salary would only have to meet the threshold of minimum wage.



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- ▶ **Can the employer place the burden on the employee to report overtime rather than them punching time every day?**

It is not recommended. If there is a dispute, the burden of proof will be on the employer to prove that the employee was paid for all hours worked. In the question posed, the employer would not have any documentation. The employer is obligated to pay the employee for actual hours worked regardless of whether they have fulfilled their timekeeping duties.

- ▶ **Should we have timecards for every pay period for every non-exempt employee (when thinking of if an audit were to happen)?**

Yes. Should an audit happen, the employer will want to be able to show that their payroll records for non-exempt employee match the corresponding timesheets for those pay periods.

- ▶ **Can isolved accommodate timekeeping for salary non-exempt employees?**

Yes, it is possible to classify non-exempt salaried employees in isolved.

Reach out to our Customer Support team at [customerservice@dominionpayroll.com](mailto:customerservice@dominionpayroll.com) for guidance on specific questions regarding your organization.

- ▶ **How does this new rule interact with state wage laws?**

State and federal overtime laws interact in a way where employees are entitled to the overtime provisions that benefit them the most.

Generally, the Fair Labor Standards Act (FLSA) is the federal law governing overtime, while states may have their own laws (like the California Labor Code) that also cover overtime. If both federal and state laws apply to an employee, the law providing the greater benefit (higher overtime pay rate, more generous exemptions, etc.) typically applies.

It is imperative that employers are familiar with the changes to the FLSA and the state overtime laws where they are located or where the employees perform work.



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▶ **Do bonuses/commissions count toward the salary threshold?**

According to FLSA regulations, non-discretionary bonuses and commissions can account for up to 10% of the salary threshold (10% of \$43,888 = \$4,388). These bonuses and commissions must be paid on an annual or more frequent basis.

▶ **What about companies that do not keep track of the hours of salaried employees. Does this require those hours to be reported and tracked now? I know Dominion Payroll has flat hours built in for salaried employees - does this change that?**

If the employee will be classified as non-exempt (eligible for overtime), then hours must be tracked to determine if/when the employee works in excess of 40 hours per workweek. This will apply to all non-exempt employees regardless of if they are hourly or salaried.

▶ **When re-evaluating job descriptions, what criteria should be used?**

Since job titles do not determine exemption status, our recommendation is to ensure job descriptions are up to date and indicate the actual duties of the position. When performing the analysis to determine who is exempt or non-exempt from overtime, the job descriptions should indicate the correct FLSA status.

If an employee meets the salary basis test and is compensated in excess of the new salary thresholds, they could be exempt from overtime if they meet the definition of one of the exemption categories outlined in the [DOL Fact Sheet](#).

▶ **Is there still a 6-month grace period for the July 1 deadline?**

The rule itself does not include any grace periods, so employers need to be prepared to comply with the respective salary threshold increases on July 1st and then eventually on January 1st. The two phase approach is ultimately the “grace period” in terms of implementation. We don’t anticipate the DOL will be knocking on doors on July 2nd, that being said, there is nothing to stop non-exempt employees from making a wage claim if they are not receiving overtime pay as required by the FLSA.



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## FREQUENTLY ASKED QUESTIONS

### ► **How does this affect sales staff?**

According to FLSA regulations, non-discretionary bonuses and commissions can account for up to 10% of the salary threshold (10% of \$43,888 = \$4,388). These bonuses and commissions must be paid annually or more frequently.

If the salesperson meets the salary threshold, they could potentially be exempt from overtime if they meet the definition of the “Outside Sales Exemption.”

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee’s primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer’s place or places of business (generally, more than 50% of time in the field.)

### ► **What about compensatory time? Is it required to use weekly now or can they use them on a monthly basis instead of overtime pay?**

Under the FLSA, compensatory time is generally allowed only for public sector (government) employees. The FLSA mandates that private sector employers must compensate non-exempt employees for overtime hours worked with overtime pay at a rate of at least one and a half times the employee's regular rate of pay.

Certain states such as Arizona, California, Alaska, Colorado, Illinois and Oregon have state legislation in place that may authorize a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, to provide compensatory time off, with certain limitations, in lieu of monetary overtime compensation.



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### ► Employees paid hourly who could be salary, can you be fined for that too?

There is no legislation that dictates if an employee or position is hourly or salaried. Whether an employee is compensated on an hourly or salary basis is solely the decision of the employer. Both hourly and salary employees can be non-exempt or eligible for overtime.

Regarding overtime pay, employers would not be out of compliance for paying employees on an hourly basis; any punitive action would only arise should the employee not be paid at 1.5x for any hours worked beyond a 40-hour workweek.

### ► Who can I reach out to at Dominion Payroll for assistance?

For our valued Dominion Payroll clients, assistance is just a call or email away!

Reach out to our Customer Support team at **804.355.3430** or via email at [customerservice@dominionpayroll.com](mailto:customerservice@dominionpayroll.com), and we'll gladly help you with any queries or concerns you may have.

If you're not yet a Dominion Payroll client or wish to learn more about our Boost HR service, don't hesitate to contact us at [marketing@dominionpayroll.com](mailto:marketing@dominionpayroll.com).

We're here to guide you every step of the way!