

Recordkeeping and the New Federal Overtime Rules

Working Together

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Under the new federal overtime rules effective December 1 (the “Final Rule”), a salaried worker must earn at least \$913 per week (\$47,476 for a full-year worker) in order to be exempt from overtime pay, up from the current minimum of \$455 per week (\$23,660 for a full-year worker). Employees who become newly eligible for overtime after the effective date of the Final Rule may pose special challenges for employers, particularly with respect to recordkeeping.

Employer Recordkeeping Requirements

The Final Rule does not change an employer’s recordkeeping obligations under the Fair Labor Standards Act (FLSA). Every employer covered by the FLSA must keep certain records for their non-exempt workers. The records must include accurate information about these employees, including **hours worked each day** and **total hours worked each workweek**. If state law imposes more specific obligations on employers than what the FLSA requires, the employer must comply with the state law as well. For example, Connecticut requires employers to maintain records for their non-exempt employees showing the **beginning and ending time of each work period, computed to the nearest unit of 15 minutes**.

Employers must start keeping these records for employees who are reclassified as non-exempt after the effective date of the Final Rule. Some companies will need to add a large number of newly overtime-eligible workers to their timekeeping system, but employers of all sizes should take the time now to consider whether their existing systems can accommodate these employees, or whether they need to update their systems.

Special Recordkeeping Considerations

Unlike exempt employees, who are paid a fixed salary that is not dependent on the number of hours worked each week, non-exempt employees need only be paid for the hours they work. Employees who are currently exempt but are reclassified as non-exempt after December 1 will be required to account for the time they spend engaging in practices that don’t raise recordkeeping issues for exempt employees, such as:

- **Stepping out during the workday for personal reasons.** Employers must ensure that their non-exempt employees sign out not only for meal breaks, but also for any time they may spend running personal errands during the workday.

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- **Working flex-time.** Technology enables many employees to work remotely, either on a permanent or occasional basis. The Final Rule does not affect the arrangements that employees have to work away from the office or to work flexible hours in the office, but it may be difficult to monitor the flex-time hours of employees who become non-exempt on December 1. Employers must consider how best to keep track of these hours and have clearly-communicated policies for recording them.
- **Using mobile devices during non-work hours.** Smartphones and other electronic devices enable many employees to check work-related email and phone messages away from the workplace and outside of their scheduled work hours, even if the employer does not require them to do so. This can raise issues for non-exempt employees because under both the FLSA and Connecticut law, the time a non-exempt employee spends doing work that is not requested by the employer, but still allowed, is generally hours worked. (The federal regulations state that, in these cases, the employer knows or has reason to believe that the employee is continuing to work and the employer is benefiting from the work being done.) Employers, therefore, must either pay non-exempt employees for the time they spend checking email and phone messages after working hours and include this time in the total number of hours worked for overtime purposes, or prohibit them from doing so without advance authorization from a supervisor. Those employees who fail to comply with the prohibition can be disciplined, but employers cannot refuse to pay them for this time.

Suggested practices to lower the likelihood that non-exempt employees can or will check email and voicemail during non-work hours include:

- Allowing only exempt employees to have access to email and voicemail after working hours.
- Not providing electronic devices, such as cell phones, laptops and tablets to non-exempt employees.
- Instructing supervisors not to contact non-exempt employees after hours. The US Department of Labor has indicated that it may issue guidance in the future that addresses the use of technology, including portable electronic devices, by employees away from the workplace and outside of scheduled work hours. We'll keep you posted.

You can view our prior blog posts on the new overtime rules [here](#) and [here](#). If you'd like more information on the Final Rule or other wage and workplace matters, please contact us at info@pullcom.com.

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