

**NANCY L. MCCONATHY PUBLIC LIBRARY DISTRICT  
BOARD OF TRUSTEES  
Special Meeting  
February 22, 2020  
9:00am**

- 1. ROLL CALL**
- 2. FLSA standard review**
- 3. ADJOURNMENT**



After speaking with the Board President and the Personnel Committee Chair, the following are the recommendations present for your discussion and approval:

Dionne – \$10.25 (up for discussion at the May 2020 meeting)

Full Time start date 2/3/2020

- The focus of her position is programming. While she was previously given some supervisory responsibilities for the evenings, it would not be difficult to remove those and revert back to the senior staff member in the evenings as the supervisor and have Dionne focus solely on programs. While her position does require off site work, over time should be minimal if at all.
- 1 paycheck paid at salaried rate of 68 hours. Per her time card she did work 75.5 hours. Due to her not being eligible to be exempt we need to pay her the excess in the amount of 100.82 after taxes.

Devonte- \$12.73 (Salary 21,500 until 1/1/2020 22,500 – still under the amount declared for exempt)

Full Time start date 10/2018

- His position as Circulation Supervisor will remain the same. He will remain as third in command for the building and retain his position of authority.
- He will go to be an hourly employee, as he does stay over at times to train/ ensure understanding of tasks over time may occur. However, I would suggest staff education and redirection informing them they will have to pick up some slack, specifically in the computer room and with processing materials, to ensure that over time remains minimal if any.
- Several paychecks paid under the understanding of being salaried. Calculated the number of comp days he accumulated last year which resulted in 12 days. Due to him not being eligible to be exempt we need to pay him the excess in the amount of 1,315.01 after taxes.
- Would like to increase his salary from \$12.73 to 13.25. This would bring his salary from 22,500 to 23,426 annually before any overtime.



Colleen- \$17.53

Full Time Start Date 7/2003

- As the Assistant Director, this position needs to exempt. While she currently meets all of the responsibilities to be exempt she does not meet the new financial requirement.
- A salary increase to the federal standard would result in her salary going from 31,000 to 35,568. This would make her hourly rate go from 17.53 per hour to 20.18.
- As this act became effective as of 1/1/2020 she would be due retribution in the amount 590.21 after taxes

Rosie - \$ 23.19

Director start date 10/2018

- As the proposed increases would be for subordinate staff it is proposed to increase Rosie's salary from \$41,000 to \$44,200. This would take her hourly rate from 23.19 to 25.00.
- There is no need for a retro check for Rosie



September 30, 2019

# New FLSA Rule Raises Minimum Salary Thresholds for Exemption from Overtime Pay

Ropes &amp; Gray LLP

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## Background

The U.S. Department of Labor (the “DOL”) has just released, after much anticipation, final updates to the regulations that define which white-collar workers are exempt from the overtime provisions of the Fair Labor Standards Act (the “FLSA”).

This final rule (the “2019 Final Rule”) supersedes a similar final rule that the DOL published on May 23, 2016, under the administration of President Obama (the “2016 Final Rule”). The 2016 Final Rule most notably would have doubled the minimum salary level required for the executive, administrative, and professional “white collar” exemptions to \$913 a week (\$47,476 per year) with automatic increases every three years. The 2016 Final Rule was blocked on November 22, 2016 and invalidated on August 31, 2017 by a federal court in Texas. The validity of the 2016 Final Rule remains on appeal before the federal Fifth Circuit Court of Appeals.

On July 26, 2017, the DOL, under the administration of President Trump, issued a request for information to begin crafting a new rule to supersede the 2016 Final Rule. The DOL issued a Notice of Proposed Rulemaking in March of 2019, taking public comment on the proposed rule. The notice of proposed rulemaking was invalidated by the court in August 2017, and the comment period closed in May of 2019.

## Provisions of the New FLSA Rule

The 2019 Final Rule implements the following changes effective January 1, 2020:

- The 2019 Final Rule increases the new minimum salary level for executive, administrative, and professional “white collar” exemptions from \$455 a week / \$23,660

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per year to \$684 per week / \$35,568 per year (compared to \$913 a week / \$47,476 per year under the 2016 Final Rule).

- Up to 10% of the salary level for these “white collar” exemptions may be met with nondiscretionary bonuses, incentive payments, and/or commissions if the employer pays them at least annually (compared to quarterly under the 2016 Final Rule).
- The 2019 Final Rule increases the minimum compensation level required to meet the separate “highly-compensated employee” exemption from \$100,000 to \$107,432 per year (compared to \$134,004 under the 2016 Final Rule). Of that amount, at least \$684 per week / \$35,568 per year must be paid on a salary or fee basis.
- Unlike under the 2016 Final Rule, these salary/compensation levels will not automatically increase every three years under the 2019 Final Rule.
- The 2019 Final Rule increases the minimum salary that must be paid to employees in computer-related occupations to \$684 per week, but leaves the existing alternative hourly rate of \$27.63 intact.

The 2019 Final Rule does not affect the outside sales or inside retail sales exemptions, which do not include a salary threshold, nor does it affect the current duties tests for the “white collar” exemptions. The 2019 Final Rule is available [here](#).

## What These Changes Mean for You

As a result of these changes, an estimated 1.3 million workers (compared to an estimated 4.2 million workers under the 2016 Final Rule) will lose their current FLSA-exempt status on January 1, 2020, unless their salaries are increased. The hardest hit industries are likely to be education, retail, health services, and leisure/hospitality, particularly in rural areas or other markets with relatively low prevailing wages. Before the 2019 Final Rule goes into effect, every employer should assess which of its employees may be affected, and determine how to respond. One approach would be to raise the salaries/compensation thresholds. Following this path may increase indirect costs by creating pressure to raise salaries for other employees, restructuring the organizational chart, or causing disgruntlement for those employees who are not affected. Another approach would be to reclassify those employees as non-exempt and pay them overtime in accordance with the FLSA. To control costs, employers can consider limiting hours of non-exempt employees (where such hours can be accomplished consistently with operational needs), or adjusting their expected future overtime earnings.


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Alternatively, employers can consider adopting either a “fluctuating workweek” or a “*Belo* plan” for employees with irregular work hours. A “fluctuating workweek” is an arrangement, between an employer and employee(s) whose hours fluctuate from week to week, under which the employee’s stated salary compensates the employee, on a straight-time basis, for all hours worked in the week; as a result, the employee(s) need to be paid only an “additional half time” (rather than time and one-half) for hours worked in excess of 40. A “*Belo* plan” is a written agreement between an employer and employee by which the employee is paid each week an amount consisting of a regular hourly rate (which is greater than the applicable minimum wage) for 40 hours per week and an amount that is one-and-one-half times that regular rate for a specified number of overtime hours (not exceeding 60 per week, and above which the employee must be paid additional compensation). A *Belo* plan is an option if the employee’s duties necessitate irregular work hours (both above and below 40 in a work week) that neither the employer nor the employee can either control or anticipate with any degree of certainty, and the total wages per pay period would vary widely week to week if computed on an hourly basis. You should consult with an attorney before adopting a fluctuating workweek, or a *Belo* plan, or taking other measures to reduce overtime costs.

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## FLSA Coverage

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### Coverage under the FLSA

Most jobs are governed by the FLSA. Some are not. Some jobs are excluded from FLSA coverage by statute. Other jobs, while governed by the FLSA, are considered "exempt" from the FLSA overtime rules.

#### Exclusions from FLSA coverage.

Particular jobs may be completely excluded from coverage under the FLSA overtime rules. There are two general types of complete exclusion. Some jobs are specifically excluded in the statute itself. For example, employees of movie theaters and many agricultural workers are not governed by the FLSA overtime rules. Another type of exclusion is for jobs which are governed by some other specific federal labor law. As a general rule, if a job is governed by some other federal labor law, the FLSA does not apply. For example, most railroad workers are governed by the Railway Labor Act, and many truck drivers are governed by the Motor Carriers Act, and not the FLSA. Many of FLSA exclusions are found in §213 of the FLSA.

#### Exempt or Nonexempt.

Employees whose jobs are governed by the FLSA are either "exempt" or "nonexempt." Nonexempt employees are entitled to overtime pay. Exempt employees are not. Most employees covered by the FLSA are nonexempt. Some are not.

Some jobs are classified as exempt by definition. For example, "outside sales" employees are exempt ("inside sales" employees are nonexempt). For most employees, however, whether they are exempt or nonexempt depends on (a) how much they are paid, (b) how they are paid, and (c) what kind of work they do.

With few exceptions, to be exempt an employee must (a) be paid at least \$23,600 per year (\$455 per week), and (b) be paid on a salary basis, and also (c) perform exempt job duties. These requirements are outlined in the FLSA Regulations (promulgated by the U.S. Department of Labor). Most employees must meet all three "tests" to be exempt.

#### Salary level test.

Employees who are paid less than \$23,600 per year (\$455 per week) are nonexempt. (Employees who earn more than \$100,000 per year are almost certainly exempt.)

#### Salary basis test.

Generally, an employee is paid on a salary basis if s/he has a "guaranteed minimum" amount of money s/he can count on receiving for any work week in which s/he performs "any" work. This amount need not be the entire compensation received, but there must be some amount of pay the employee can count on receiving in any work week in which s/he performs any work. Some "rules of thumb" indicating that an employee is paid on a salary basis include whether an employee's base pay is computed from an annual figure divided by the number of paydays in a year, or whether an employee's actual pay is lower in work periods when s/he works fewer than the normal number of hours. However, whether an employee is paid on a salary basis is a "fact," and thus specific evaluation of particular circumstances is necessary. Whether an employee is paid on a salary basis is not affected by whether pay is expressed in hourly terms (as this is a fairly common requirement of many payroll computer programs), but whether the employee in fact has a "guaranteed minimum" amount of pay s/he can count on.

The FLSA salary basis test applies only to reductions in monetary amounts. Requiring an employee to charge absences from work to leave accruals is not a reduction in "pay," because the monetary amount of the employee's paycheck remains the same. Similarly, paying an employee more than the guaranteed salary amount is not normally inconsistent with salary basis status, because this does not result in any reduction in the base pay.

With some exceptions, the base pay of a salary basis employee may not be reduced based on the "quality or quantity" of work performed (provided that the employee does "some" work in the work period). This usually means that the base pay of a salary basis employee may not be reduced if s/he performs less work than normal, if the reason for that is determined by the employer. For example, a salary basis pay employee's base pay may not be reduced if there is "no work" to be performed (such as for a plant closing or slow period), and a salary basis employee's base pay may not be reduced for partial day absences. However, employers may "dock" the base pay of salary basis employees in full day increments, for disciplinary suspensions, or for personal leave, or for sickness under a bona fide sick leave plan (as for example if the employee has run out of accrued sick leave).

Thus, there can be "permissible" and "impermissible" reductions in salary basis pay. Permissible reductions have no effect on the employee's exempt status. Impermissible reductions may, in that the general rule is that an employee who is subjected to impermissible reductions in salary is



no longer paid on a salary basis, and is therefore nonexempt. However, employers have several avenues by which they can "cure" impermissible reductions in salary basis pay, and as a practical matter these make it unlikely that an otherwise exempt employee would become nonexempt because of salary basis pay problems. The salary basis pay requirement for exempt status does not apply to some jobs (for example, doctors, lawyers and schoolteachers are exempt even if the employees are paid hourly).

#### **The duties tests.**

An employee who meets the salary level tests and also the salary basis tests is exempt only if s/he also performs exempt job duties. These FLSA exemptions are limited to employees who perform relatively high-level work. Whether the duties of a particular job qualify as exempt depends on what they are. Job titles or position descriptions are of limited usefulness in this determination. (A secretary is still a secretary even if s/he is called an "administrative assistant," and the chief executive officer is still the CEO even if s/he is called a janitor.) It is the actual job tasks that must be evaluated, along with how the particular job tasks "fit" into the employer's overall operations.

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

#### ***Exempt executive job duties.***

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).

Supervision means what it implies. The supervision must be a regular part of the employee's job, and must be of other employees. Supervision of non-employees does not meet the standard. The "two employees" requirement may be met by supervising two full-time employees or the equivalent number of part-time employees. (Two half-time employees equal one full-time employee.)

"Mere supervision" is not sufficient. In addition, the supervisory employee must have "management" as the "primary duty" of the job. The FLSA Regulations contain a list of typical management duties. These include (in addition to supervision):

- interviewing, selecting, and training employees;
- setting rates of pay and hours of work;
- maintaining production or sales records (beyond the merely clerical);
- appraising productivity; handling employee grievances or complaints, or disciplining employees;
- determining work techniques;
- planning the work;
- apportioning work among employees;
- determining the types of equipment to be used in performing work, or materials needed;
- planning budgets for work;
- monitoring work for legal or regulatory compliance;
- providing for safety and security of the workplace.

Determining whether an employee has management as the primary duty of the position requires case-by-case evaluation. A "rule of thumb" is to determine if the employee is "in charge" of a department or subdivision of the enterprise (such as a shift). One handy clue might be to ask who a telephone inquiry would be directed to if the called asked for "the boss." Typically, only one employee is "in charge" at any particular time. Thus, for example, if a "sergeant" and a "lieutenant" are each at work at the same time (in the same unit or subunit of the organization), only the lieutenant is "in charge" during that time.

An employee may qualify as performing executive job duties even if s/he performs a variety of "regular" job duties as well. For example, the night manager at a fast food restaurant may in reality spend most of the shift preparing food and serving customers. S/he is, however, still "the boss" even when not actually engaged in "active" bossing duties. In the event that some "executive" decisions are required, s/he is there to make them, and this is sufficient.

The final requirement for the executive exemption is that the employee have genuine input into personnel matters. This does not require that the employee be the final decision maker on such matters, but rather that the employee's input is given "particular weight." Usually, it will mean that making personnel recommendations is part of the employee's normal job duties, that the employee makes these kinds of recommendations frequently enough to be a "real" part of the job, and that higher management takes the employee's personnel suggestions or recommendations seriously.

#### ***Exempt professional job duties.***

The job duties of the traditional "learned professions" are exempt. These include lawyers, doctors, dentists, teachers, architects, clergy. Also included are registered nurses (but not LPNs), accountants (but not bookkeepers), engineers (who have engineering degrees or the equivalent and perform work of the sort usually performed by licensed professional engineers), actuaries,



2/19/2020

Re: [Directors Only] FLSA Salary Threshold Law 2020

**From:** Scott Pointon via Directors <directors@list.railslibraries.info>  
**To:** 'Directors Only' <directors@list.railslibraries.info>  
**Cc:** Scott Pointon <spointon@whiteoaklib.org>  
**Subject:** Re: [Directors Only] FLSA Salary Threshold Law 2020  
**Date:** Tue, Feb 18, 2020 2:37 pm

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It wasn't a surprise to me, but I have been watching it closely for over a year.

Just to recap, at the end of the Obama Administration, the DOL raised it to somewhere in the \$47,000 per year range, but then in late 2016 Trump got a court to block that implementation, essentially keeping it at the level it has been for many years. After he was inaugurated, Trump pledged to come up with a better threshold amount. Last summer, the DOL announced that it would "probably" be \$35,568 annually, but they would announce it "for real" by the end of 2019.

- Scott

**Scott E. Pointon, Director**

[White Oak Library District](#)

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**From:** Directors [mailto:directors-bounces@list.railslibraries.info] **On Behalf Of** Julie Wayland via Directors  
**Sent:** Tuesday, February 18, 2020 12:59 PM  
**To:** Directors Only  
**Cc:** Julie Wayland  
**Subject:** [Directors Only] FLSA Salary Threshold Law 2020

Is anyone else effected by this? I feel like it came out of left field.

Starting January 1, 2020 the salary threshold for an "exempt" employee under the **Fair Labor Standards Act (FLSA)** will increase to \$648 per week, or \$35,568 annually.

Thank you,

Julie Wayland, Director  
Princeton Public Library

<https://mail.aol.com/webmail-std/en-us/PrintMessage>



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