



DOL's New White Collar Overtime Exemption Rule Frequently Asked Questions

Q What is the new White Collar Overtime Rule?

A On May 18, 2016, the U.S. Department of Labor (DOL) issued a rule that dramatically increases the salary and compensation levels that must be met in order for “white collar” dealership employees to be exempt from overtime. The new rule does *not* modify the so-called duties tests that also must be met for “white collar” employees to be exempt. Specifically, the rule:

- Increases the salary threshold for “executive,” “administrative,” “professional,” and “computer” employees (EAP) to \$913 per week (\$47,476 per year) from \$455 per week (\$23,660 per year);
- increases the “highly compensated employee” threshold to \$134,004 per year from \$100,000;
- allows dealerships to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new EAP salary threshold; and
- includes an automatic escalator for updating these thresholds every three years.

Q When does this rule take effect?

A December 1, 2016. The revised thresholds apply to weekly/biweekly dealership employees for the workweek (or pay period) that includes December 1, 2016.

Q What is “overtime”?

A Unless specifically exempted, federal law requires that dealership employees be paid overtime pay of one-and-a-half their regular rate of pay for hours worked in excess of 40 in a workweek. Note: state overtime exemption laws may be different or stricter than federal law.

Q Which “white collar” dealership employees are affected by this new rule?

A “EAP” employees generally must:

- Be salaried, meaning they are paid a predetermined and fixed salary not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”);
- be paid a salary of at least \$913 per week (or \$47,476 annually for a full-year worker); and
- primarily perform “executive,” “administrative,” “professional” or “computer” duties, as [defined](#) by the DOL.

“Highly compensated employees” generally must:

- Receive at least \$913 per pay period on a salary or fee basis, without regard to the payment of nondiscretionary bonuses and incentives, but may receive nondiscretionary bonuses and incentives (including commissions) toward the annual compensation threshold of \$134,004.
- Satisfy a minimal duties test.

Examples of dealership white collar employees include general, department and assistant managers, foremen, office managers and other office employees, human resources professionals, controllers, accountants, attorneys and computer specialists.

Q Can bonuses be applied to satisfy some of the new EAP salary threshold?

A Yes. The new rule allows nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the EAP salary threshold if such payments are made at least quarterly. If an employee does not earn enough in nondiscretionary bonuses and incentive payments (including commissions) in a given quarter to retain their exempt status, the rule permits a “catch-up” payment at the end of the quarter and the employer has one pay period to make up for the shortfall.

Q How does the DOL define discretionary bonus and a nondiscretionary bonus?

A Nondiscretionary bonuses and incentive payments (including commissions) are forms of compensation promised to employees to induce them to work more efficiently or to remain with the company. Discretionary bonuses are those for which the decision to award the bonus and the payment amount is at the employer’s sole discretion and not in accordance with any preannounced standards.

Q Can dealership white collar employees be covered by another overtime exemption?

A Yes. Dealership white collar employees may be covered by more than one overtime exemption. For example, the “commissioned employee” exemption requires that:

- The employee be employed by a retail or service establishment;
- the employee’s regular rate of pay exceed one-and-a-half times the applicable [minimum wage](#) for every hour worked in a workweek in which overtime hours are worked; and
- more than half the employee’s total earnings in a representative period consist of commissions.

Note: other dealership employees who do not meet the “white collar” tests may nonetheless be exempt from overtime under other exemptions such as one applicable to “salesmen, partsmen, and mechanics.”

Q How should dealerships comply with this new rule?

A There are many options to consider, all of which involve a careful review of how and how much white collar employees are currently being compensated. These include:

- Increasing employee compensation to the new thresholds by the effective date.
- Paying overtime for hours worked over 40 in a workweek to employees who do not meet the compensation tests. Concurrently, dealers should consider reducing or eliminating overtime hours. This may even involve dividing one job between two or more individuals.
- Increasing the commission compensation of an employee to satisfy the “commissioned employee” overtime exemption described above.

Q How will the automatic salary escalator work?

A The salary thresholds will be adjusted automatically every three years, starting in 2020. Each update will raise the EAP threshold to the 40th percentile of full-time salaried workers in the lowest-wage census region. The “highly compensated employee” threshold will increase to the 90th percentile of full-time salaried workers nationally. DOL intends to post adjusted salary thresholds 150 days in advance of their effective date (beginning on August 1, 2019).

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