### Introduction

The U.S. Department of Labor announced in May its long-anticipated changes to overtime rules under the Fair Labor Standards Act (FLSA). For many of our clients in the security industry, this regulatory change will fundamentally alter how businesses approach pay and overtime for their employees.


For more information on the FLSA exemption requirements, visit [www.dol.gov/whd/overtime/fs17a_overview.pdf](http://www.dol.gov/whd/overtime/fs17a_overview.pdf)

### 1. Salary Test

To be considered exempt, in most cases an employee must be paid on a salary basis and must receive a guaranteed salary each week. That salary cannot be reduced based on quality or quantity of work; in fact, there are very few scenarios where an exempt employee’s salary can be docked.

### 2. Minimum Salary Test

Effective Dec. 1, 2016, the new salary minimum will be $913/week ($47,476/year). Anything below that requires that the employee be designated non-exempt and thereby paid overtime for work exceeded 40 hours per week.

### 3. Auto-Salary Threshold Increases

Automatic Salary Threshold Increases Every 3 Years (Not Annually) to Maintain Level at 40th Percentile in Lowest-Wage Census Region

Department of Labor (DOL): reduced the frequency of the automatic increases in response to concerns raised by SHRM and others. Instead of annual increases, the threshold will be adjusted every 3 years to maintain the level at the 40th percentile of full-time salaried workers in the lowest-wage Census region. Automatically updating the salary threshold, however, does not allow the government to take into account changing economic conditions, specific impact on certain industries, or regional differences. It also denies the public the ability to have input on the threshold as required by the regulatory process.

### 4. Highly Compensated Employee (HCE) Exemption

**Highly Compensated Employee (HCE) Exemption Is Now $134,004 Per Year**

The final rule retains the methodology in the proposed rule setting the threshold at the 90th percentile of full-time salaried workers nationally.

### 5. Duties Test

A properly classified exempt employee must also pass the duties test. Not only must an exempt employee be paid a minimum salary, they also must perform special duties that make them eligible for this exemption. These are what the Department of Labor calls the “White Collar Exemptions.” To qualify as exempt, an employee’s primary duties have to meet the standards in one of the following categories:

**Executive:** Management of the organization or a customarily recognized department or division. This is true management — not usually a working supervisor — based on actual duties and level of bona fide, independent management authority, and not on job title alone.

**Administrative:** High-level office or non-manual work directly related to management or general operations (such as accounting, IT, HR, marketing) and including the exercise of independent judgment and decision-making discretion on matters of significance.

**Professional:** Work requiring advanced knowledge in science or other field of learning customarily obtained by a prolonged course of specialized intellectual instruction, i.e., higher education (not vocational education). In other words, much of the knowledge required is typically learned by going to college, not on-the-job.

**Computer:** Design, development, creation, testing, and modification of computer systems and programs. Does not apply to help desk employees and roles involved in the manufacture, operation, repair, or maintenance of computers. Exempt computer professionals may, in lieu of passing the salary test, be paid by the hour if they make at least $27.63 per hour.

**Outside Sales:** Making sales or obtaining orders or contracts, and work is largely performed away from the employer’s premises, i.e., cold-calling, identifying and visiting prospects, etc. Insides sales and customer service positions typically do not qualify. Bona fide outside sales professionals do not have to meet the salary test.