

The New Overtime Regulations – What is Compensable Time?

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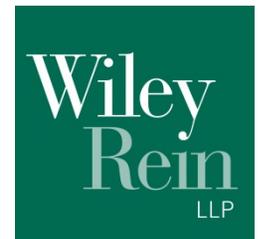


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Summary of Changes to the Fair Labor Standards Act (FLSA) Overtime Rule

- Increases the salary threshold requirement for certain exemptions
 - Executive, administrative, and professional (“white collar”)
 - Highly compensated employees (HCE)
- Salary threshold for “white collar” exemptions increases to \$913/week or \$47,476/year
 - Based on 40th percentile of earnings for full-time salaried workers in the lowest-wage Census region, currently the South
 - Current threshold: \$455/week or \$23,660/year
- Highly compensated employee compensation level would increase to \$134,004/year
 - Based on 90th percentile of earnings for full-time salaried workers nationally
 - Current level: \$100,000/year

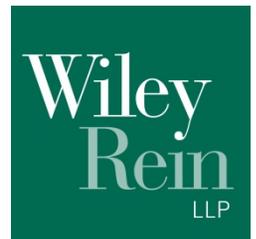


Summary of Changes to the FLSA Overtime Rule (Continued)

- Allows up to 10% of the salary threshold for non-highly compensated employees to be met by non-discretionary bonuses, incentive pay, or commissions if payments made on at least quarterly basis
- Effective Date: December 1, 2016
- No changes to the duties test
- Automatic updates to the salary threshold every 3 years, beginning January 1, 2020

What Employers Can Do Now to Prepare for December 1, 2016

- Identify the impacted employees who fall within the gap between the current and new salary threshold
- How will you deal with currently exempt employees whose salaries are lower than the new salary threshold?
 - Raise salary?
 - Pay overtime?
 - Limit employees' hours to 40 per week?
- Will you need to alter your staffing structure?
- How will you handle the increase in employee inquiries regarding classification changes?



Compensable Time

Compensable Time for Non-Exempt Employees

- Compensable time = employees “suffered or permitted to work”
 - Includes time worked at the office, work performed at home, work performed on the road
- Whether time spent at work is “compensable time” depends on whether the employer permitted or allowed the employee to perform the activity
 - Knew or should have known standard



Common Pitfall Areas – Compensable or Non-Compensable?

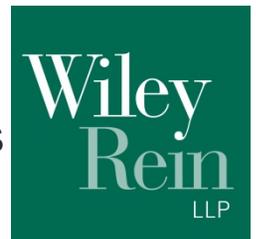
- Rest and meal breaks
- Travel time
- Training, seminars, and lectures
- Pre and post-shift time
- Smartphone time
- Dinners and social events
- “On-call” time
- Waiting time
- Sleep time



Recordkeeping Requirements

Recordkeeping Under the FLSA

- Must maintain certain records for non-exempt employees:
 - Employee's full name and social security number
 - Address, including zip code
 - Birth date, if younger than 19
 - Sex and occupation
 - Time and day of week when employee's workweek begins
 - Hours worked each day
 - Total hours worked each workweek
 - Basis on which employee's wages are paid (e.g., "\$9 per hour", "\$440 a week")
 - Regular hourly pay rate
 - Total daily or weekly straight-time earnings
 - Total overtime earnings for the workweek
 - All additions to or deductions from the employee's wages
 - Total wages paid each pay period
 - Date of payment and the pay period covered by the payment
- Maintain for 3 years: payroll records, collective bargaining agreements, employment contracts, sales and purchase records
- Maintain for 2 years: time cards and piece work tickets, wage rate tables, work and time schedules, records of additions to or deductions from wages



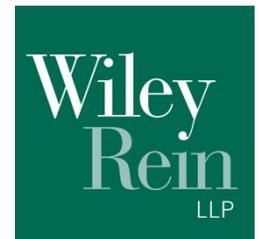
Timekeeping Under the FLSA

- Employers may use any method they choose for tracking and recording hours
 - Acceptable as long as complete and accurate
- Various Options
 - Time clock – clock in/out
 - Have a timekeeper keep track of employees' work hours
 - Have employees' write their own times on the records
- Fixed Schedules
 - May keep a record showing the exact schedule of daily and weekly hours and merely indicate that the employee followed the schedule
 - When an employee deviates from the fixed schedule, the employer must record the number of hours the employee actually worked

Recordkeeping Under the D.C. Wage Theft Prevention Amendment Act of 2014

- D.C. Wage Theft Prevention Amendment Act requires employers to provide a notice to each D.C.-based employee (exempt and non-exempt) containing specific information about an employee's terms and conditions of employment. Each notice must include:
 - Employer's name and any "doing business as" names used by the employer
 - Physical address of the employer's main office or principal place of business
 - Employer's mailing address
 - Employer's telephone number
 - Employee's regular payday, pay rate, and the basis of that rate (e.g., by the hour, shift, day, week, salary, piece or commission)
 - Any allowances claimed as part of the minimum wage (e.g., tip, meal, or lodging allowances)
 - Employee's overtime pay rate or exemptions from overtime pay
 - Living wage or exemptions from living wage
 - Applicable prevailing wages
- Employers can use the template provided by the Department of Employment Services or modify the template to suit the particulars of the organization

http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/Notice%20of%20Hire-English_OWH%20Revised.pdf

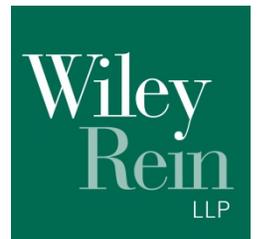


Timekeeping Under the D.C. Wage Theft Prevention Amendment Act

- Employers must keep a record of the “precise time” an employee works each day
 - Differs from FLSA standard
 - Applies only to non-exempt employees
- What does “precise time” mean?
 - Not defined in the Act
 - Instead of recording “8 hours worked,” the employer is required to record the employee’s exact start time, the beginning and end time of any break that was unpaid, and the exact quitting time
 - Recording time to the nearest 5 minutes or to the nearest one-tenth or quarter of an hour satisfies the D.C. Wage Theft Prevention Act

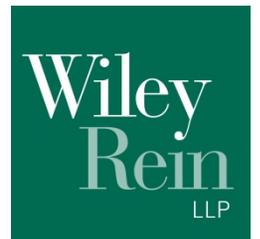


Compliance Best Practices and Manager Training



Compliance Best Practices

- Conduct audit of pay practices
 - With attorney so protected under attorney-client privilege
- Revisit written job descriptions
 - Proof of primary duties and responsibilities
 - Reviewed by the Department of Labor in an audit
 - Litigation benefit
- Time and attendance system
- Employee certify time accuracy
- Overtime policy
 - Advance written approval
 - Pay for unapproved overtime, but may be disciplined



Manager Training

- Wage and hour basics
- Know employee classifications
- No “off the clock” work; must pay employees for all hours worked
 - Working during lunch
 - Performing work before clock in
 - Answering emails from home in the evening
- Enforcing overtime policy
- Retaliation prohibited
- Potential personal liability

Questions and Contact Information



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