



November 20, 2019

AHILA Webinar: New Overtime Regulations



May 20, 2019

Melissa Smith, Director
Division of Regulations, Legislation and Interpretation
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-3502
Washington, DC 20210

Re: Proposed Rulemaking Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (84 Fed. Reg. 10900; RIN: 1235-AA20)

Dear Ms. Smith:

The American Hotel & Lodging Association (“AHLA” or “Association”) submits these comments in response to the above-referenced Notice of Proposed Rulemaking (“Proposed Rule”) published in the Federal Register on March 22, 2019.

Serving the hospitality industry for more than a century, AHLA is the sole national Association representing all segments of the U.S. lodging industry, including hotel owners, real estate investment trusts (REITs), chains, franchisees, management companies, independent properties, bed & breakfasts, state hotel Associations, and industry suppliers. Headquartered in Washington, D.C., AHLA focuses on strategic advocacy, communications support, and workforce development programs for an industry that advances long-term career opportunities for employees, invests in local communities across the country, and hosts more than one billion guests in American hotels every year. AHLA proudly represents a dynamic hotel industry of more than 54,000 properties that supports \$1.1 trillion in U.S. sales and generates nearly \$170 billion in taxes to local, state and federal governments.

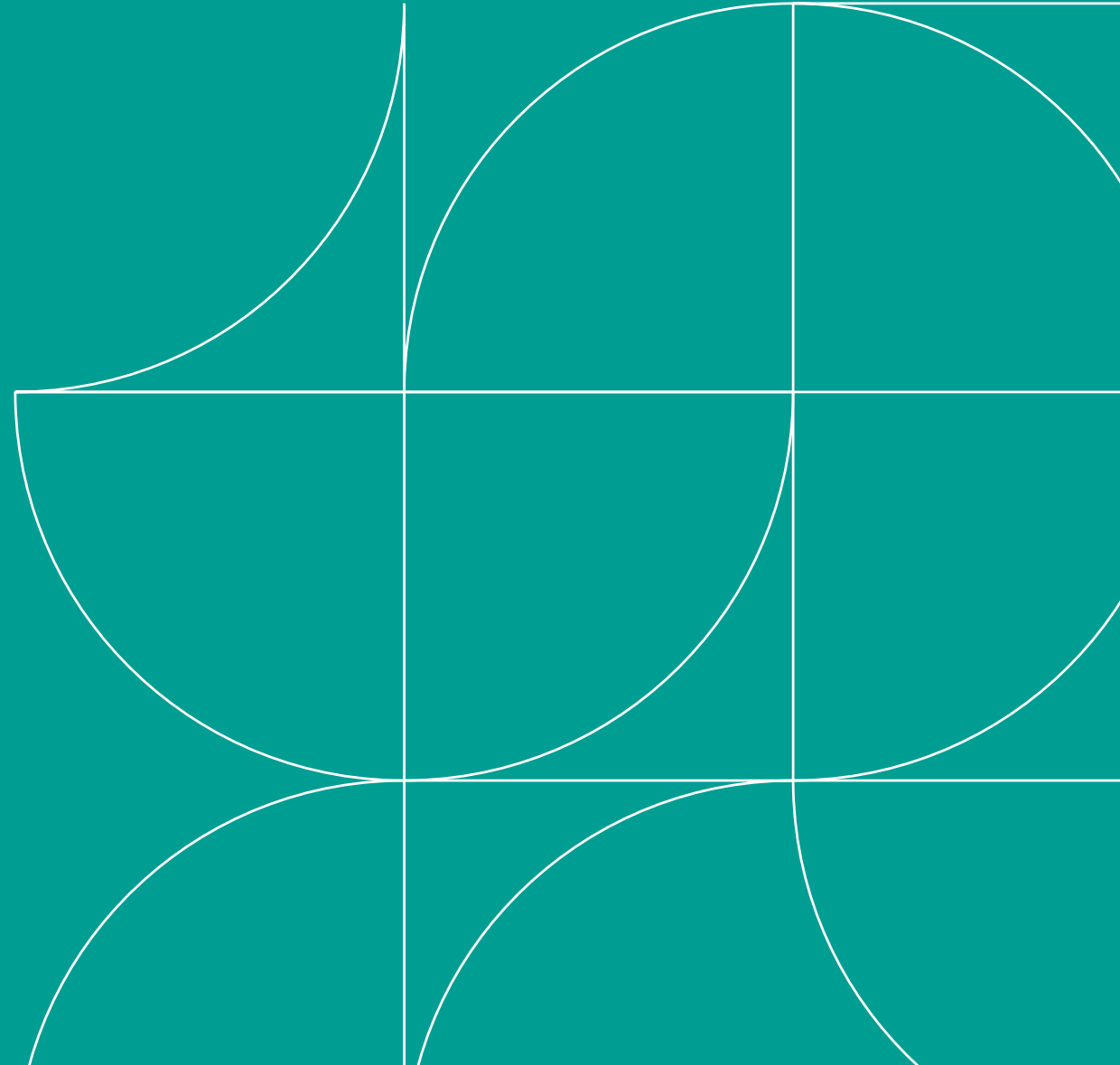
AHLA Engagement



Alexander J. Passantino
November 20, 2019

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Standard Salary Level Increased

- New annualized salary level will be \$35,568
 - This is \$684/week
 - Slightly up from proposal in NPRM
 - Represents 20th percentile of full-time salaried workers in South and/or in retail sector nationally.
- Allows up to 10% of the minimum salary to be met by non-discretionary bonuses, incentive pay or commissions, if made at least on annual basis
- Room and Board Still Excluded

No Automatic Update to Salary Level

- Rejected 2016's decision to automatically update salary level required for exemption **every three years**
- Committed to reviewing more frequently via notice-and-comment rulemaking.

Highly Compensated Employee Salary Level Increased

- New Highly-Compensated Salary Level will be \$107,432
 - Considerably less than \$147,000 identified in NPRM
 - Represents 80th percentile of full-time salaried workers nationally
- Requires payment on a salary basis of at least \$684/week
- Additional payments to bring to new level can include:
 - Commissions
 - Nondiscretionary bonuses
 - End-of-year catch-up payment

No Changes to the Duties Tests

- In the NPRM, DOL asked several questions regarding the duties tests – particularly the primary duty test – but did not propose specific language
- In the Final Rule, DOL does not make any changes to the duties tests
- Nor are there any changes to the salary basis test
- As under the existing regulations, there still are no exceptions or allowances for:
 - part-time employees
 - employees of non-profits or public entities

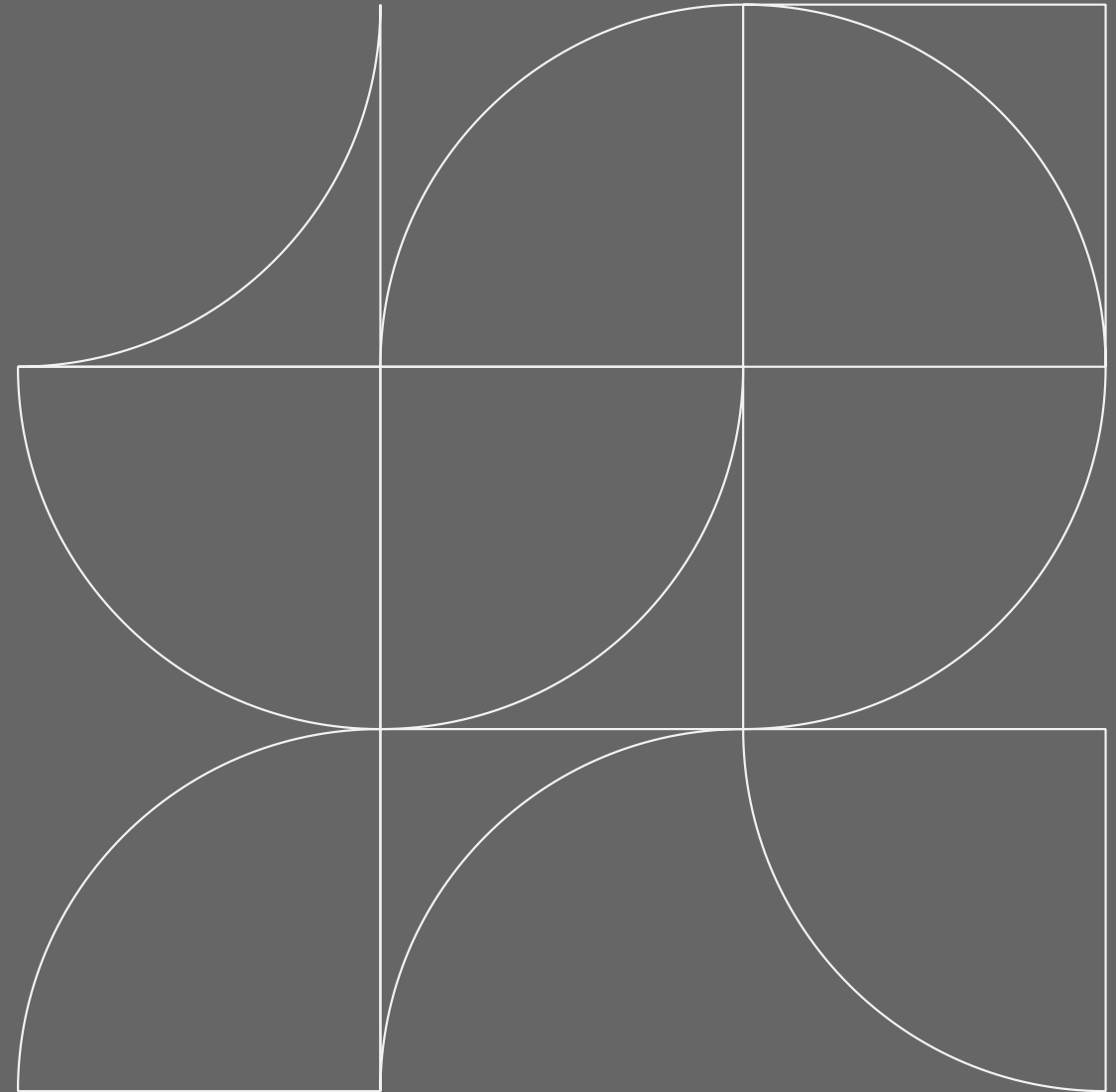
Employers Have About Three Months to Comply

- Effective date is January 1, 2020
- Any upward salary adjustments must be in place before that date to ensure continued application of exempt status
 - Note that January 1 is a Wednesday
- For bi-weekly pay, employers will need to adjust pay for pay period that includes January 1, 2020

Part-Time Exempt Employees

- Except for limited circumstances (doctors, lawyers, teachers, certain academic administrators), FULL salary level is required
- Means anyone earning below \$35,568 is NONEXEMPT
 - Track hours
 - Regular rate
 - Overtime pay
- What about “fee” basis?

What Happens Next?



Develop a Plan to Reach Crucial Decision Points

- In some cases, increase salaries to \$35,568 and continue to treat employees as exempt
- In other cases, reclassify employees to non-exempt status using a variety of pay options
- And in yet other cases, employers may choose to restructure:
 - Jobs
 - Workforce
 - Operations

Gap Analysis

- Analyze the “salary gap” to determine salary levels for exempt employees and identify any position—not just employee—that falls below the new standard
- Consider the “ripple effect” on upstream and cross-stream jobs
- Analyze the “duties gap,” as well, to determine whether any jobs that are paid at a sufficient salary level might not perform the duties of an exempt role
- Model various compensation plans to determine:
 - Cost of increasing salaries
 - Cost of reclassification

Plan to Reclassify

- Determine working hours of employees who might be reclassified and how those hours might change as non-exempt employees
 - Review records that may be suggestive of hours worked
 - Consider how those records may be over- and/or under-inclusive
 - Canvass those who manage to-be-converted employees
- Determine potential pay rates and compensation methods for those employees

How to Pay

- Hourly: Straight hourly rate for hours worked up to 40; 1.5 times regular rate of pay for hours worked in excess of 40
- Salary Plus Overtime: Salary for hours worked up to 40 (or some lower number); 1.5 times regular rate of pay for hours worked in excess of 40
- Fluctuating Workweek: Agreement with employee to pay salary for all straight-time hours worked; $\frac{1}{2}$ time of salary divided by hours worked for OT hours
- Fluctuating Workweek/Static OT Rate: Agreement with employee to pay salary for all straight-time hours worked; $\frac{1}{2}$ time of salary divided by 40 for OT hours

What to Pay

- Amount of the newly non-exempt employee's rate?
Same as before reclassification
 - Will increase labor costs
(Especially when considering bonuses, commissions, incentive pay)
 - Could provide incentive for off-the-clock work
 - May price employee out of the market and lead to no or fewer increases in the future
 - Salary compression with the next grade
- Lowered to take into account overtime costs
 - Employee will “earn back” the full salary through anticipated overtime
 - But what if overtime isn't worked?
 - What about lowered rate for PTO and holidays?
 - Pay decrease could cause loss in employee morale
- Communications / employee relations plan is key

CAUTION!

Reclassified employees become NONEXEMPT employees

- This means that, regardless of the method of pay, they are subject to the same wage & hour rules as other non-exempt employees:
 - Must maintain accurate time records (even if no OT worked)
 - Must ensure proper control of employee work, such as:
 - Off-the-clock
 - Meal and rest breaks
 - Travel time
 - Remote access
 - Must pay OT premium for hours work in excess of 40/week
- No method of compensation permits an employer to avoid keeping accurate time records for non-exempt employees

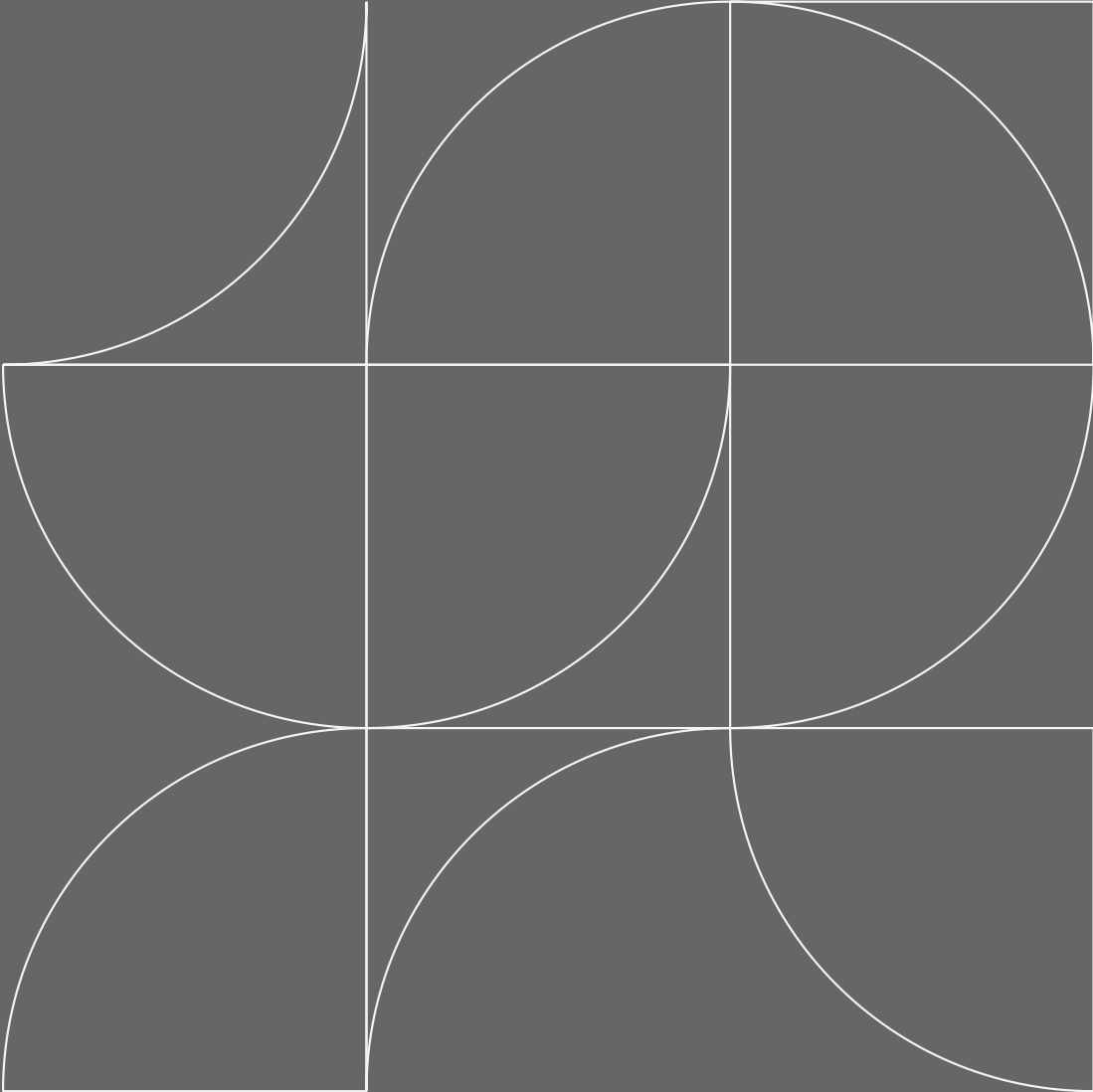
Restructuring

- To justify increased exempt employee salaries, some jobs will need to take on more responsibilities
- To avoid reclassification, some jobs will need to shed nonexempt responsibilities
- Some jobs will need to be split into two or more roles because overtime costs would be too great
- Some jobs and employees will necessarily be phased out
- As predicted by many critics of the new rule, some businesses will need to close locations, departments, and other aspects of their operations

Careful Execution and Communications Strategies Are Crucial

- Before you take your first steps:
 - Identify stakeholders and champions who can help define and reach endgame objectives
 - Develop a communications plan to engage key players
 - Determine your process for achieving objectives before January 1
- After you have made the important business decisions about whose pay will increase, who will be reclassified, and what roles / operations might need to be restructured:
 - Develop a detailed implementation and communications strategy

Q&A



contact information

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