

A FINANCIAL EVALUATION OF HOW TO COMPLY WITH THE WAGE & HOUR DEPARTMENT'S NEW OVERTIME RULE

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Fair Labor Standards Act ("FLSA")



Classification of Employees

Exempt

- Salary Requirement
 - Salary Basis Test
 - Salary Level Test
- Job Duties



Non-Exempt

- Any employee who is not exempt



Exempt Job Duties



Executive



Administrative



Professional



Computer



Outside Sales

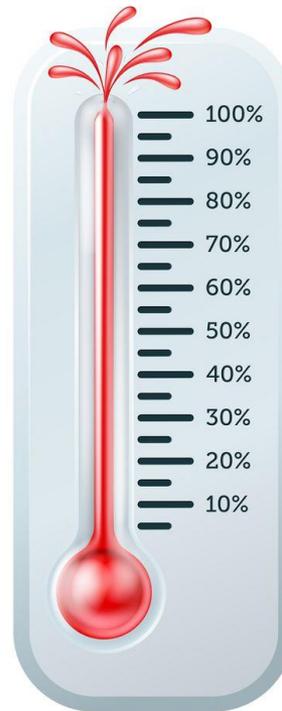


Highly Compensated

New Overtime Rule

Exempt

- Salary Requirement
 - Salary Basis Test
 - **Salary Level Test**
 - \$455/wk or \$23,660/yr
 - **After December 1, 2016:**
\$913/wk or \$47,476/yr
- Job Duties



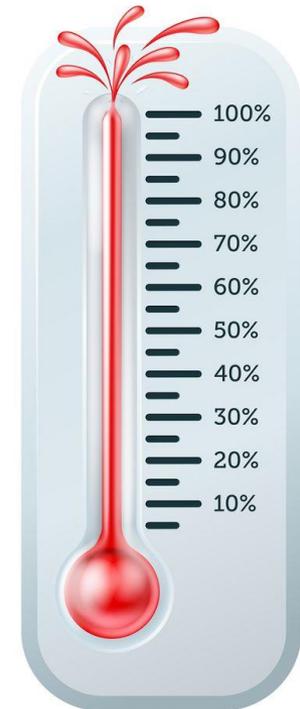
Non-Exempt

- Any employee who is not exempt



New Overtime Rule

- Increases the minimum salary level amount:
 - Current:** \$455/wk (\$23,660/yr)
 - December 1, 2016:** \$913/wk (\$47,476/yr)
 - *Increase every three years, starting January 1, 2020
- Permits up to 10% of the minimum salary level to be satisfied by the payment of nondiscretionary bonuses, incentives, and commissions.
- Permits quarterly catch-up payments to meet the minimum salary level required to maintain the exemption.
- For highly compensated employees, increases the threshold compensation (from \$100,000 to \$134,004 per year) and minimum catch-up payment (from \$10,000 to \$24,004).





Breaking News



- **September 28, 2016:** U.S. House of Representatives approved a bill to delay the deadline for complying with the Final Overtime Rule from December 1, 2016 to June 1, 2017.
- **September 20, 2016:** U.S. Chamber of Commerce and coalition of business groups in Texas filed a lawsuit challenging the automatic minimum salary increases and the kind of incentive compensation that may be counted toward salary basis minimum threshold.
- **September 19, 2016:** 21 states (including Michigan) filed a lawsuit challenging the Final Overtime Rule, which could result in postponement of the effective date.
 - **October 12, 2016:** States filed an Emergency Motion for Preliminary Injunction (enjoining the Final Overtime Rule from being effective pending a hearing on the merits).

Identify Employer's Goals



Evaluate Employees Affected

- Currently exempt employees earning salaries between \$23,660 and \$47,475



Impact of Discretionary Bonus



- **Exempt employees:**
May not be counted toward the minimum salary level requirement.
- **Non-exempt employees:**
Excluded from regular rate of pay.

Impact of Nondiscretionary Periodic Bonus



- **Exempt employees:**
 - Current rule: May not be counted toward the minimum salary level requirement.
 - After December 1, 2016: May use nondiscretionary bonuses, incentive payments, and commissions that are *paid at least on a quarterly basis* to satisfy up to ten percent of the minimum salary level requirement.
- **Non-exempt employees:**
 - Must be included in the regular rate of pay and additional overtime must be paid as a result of the increase in an employee's regular rate of pay.

Impact of Nondiscretionary Periodic Bonus

How to calculate additional overtime owed based on nondiscretionary periodic bonus:

- Divide bonus by number of weeks in period (weekly increase).
- For each week in which overtime was worked, divide the weekly increase by number of hours worked in that week (hourly rate increase).
- Multiply the hourly rate increase by .5 and then multiply that amount by the number of overtime hours worked that week.



Impact of Nondiscretionary Periodic Bonus

How to calculate additional overtime owed based on nondiscretionary periodic bonus *in form of commission and when the number of hours worked each week fluctuates significantly during the period:*

- Divide commission by total number of hours worked in the period during which commission was paid (hourly rate increase).
- Multiply the hourly rate increase by .5 and then multiply by that amount by the number of overtime hours worked over the period.



Impact of Percentage Bonus



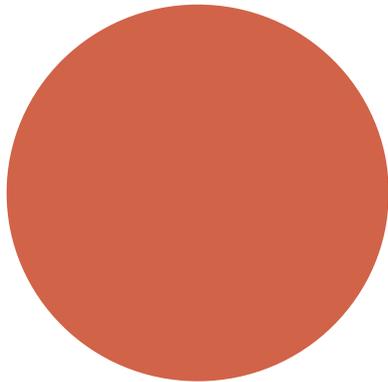
- Pay a percentage of employee's straight-time and overtime earnings over period
- Percentage bonuses are nondiscretionary; they require a contractual agreement.
 - As such, they affect exempt and non-exempt employees in the same way as a nondiscretionary bonus.

Options for Reclassifying Employees

- **Maintain as exempt:**
 - Increase salary to meet or exceed new salary level threshold (or 90% of new salary level threshold if paying nondiscretionary bonus on at least quarterly basis to make up 10% of salary level); and
 - Maintain exempt job duties.
- **Convert to non-exempt:**
 - Convert salary to hourly
 - Options:
 - Discretionary bonus
 - Nondiscretionary bonus
 - Percentage bonus

Converting Salary to Hourly

Overall Compensation

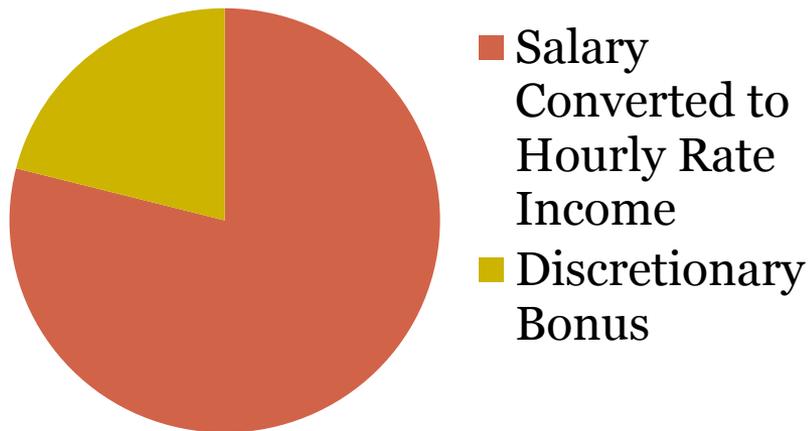


■ Salary
Converted to
Hourly Rate
Income

- Calculate total units of pay per week:
 - 1 unit per hour up to 40
 - 1.5 units per hour over 40
- Divide annual salary by 52 weeks (weekly salary).
- Divide weekly salary by total units of pay per week (hourly rate).

Converting Salary and Discretionary Bonus

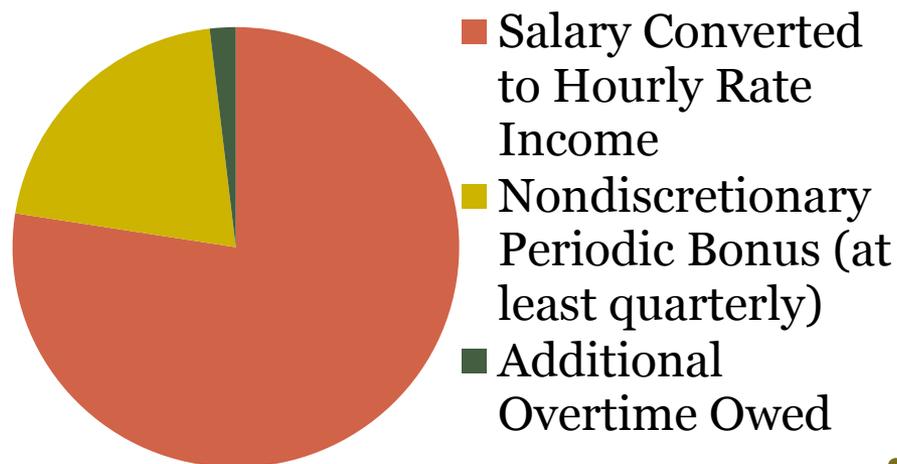
Overall Compensation



- Maintain discretionary bonus:
 - Calculate using last slide.
- Maintain overall compensation without bonus:
 - Determine total units of pay earned per week.
 - Divide annual salary plus discretionary bonus by 52 weeks and then divide by total number of units of pay per week.

Converting Salary and Nondiscretionary Periodic Bonus

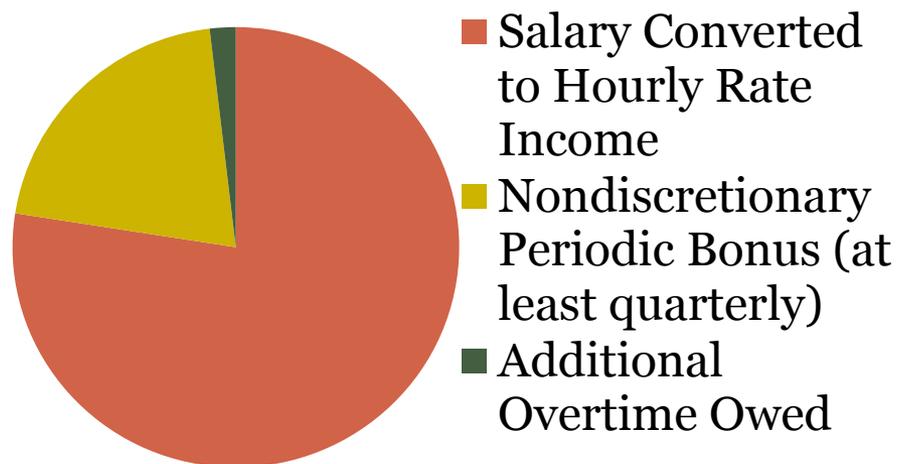
Overall Compensation



- **Goal:** Maintain amount of nondiscretionary periodic bonus.
 - Convert salary to hourly.
 - Calculate and pay additional overtime owed based on bonus.
- **Result:** Pay prior compensation *plus* additional overtime.

Converting Salary and Nondiscretionary Periodic Bonus

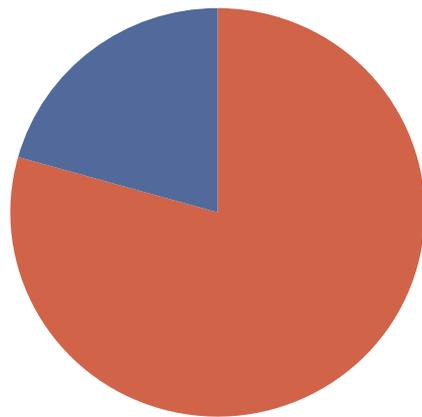
Overall Compensation



- **Goal:** Maintain overall compensation package.
 - Convert salary to hourly.
 - Reduce non-discretionary bonus by percentage.
 - Divide total hours worked per week by total units of pay earned per week (percentage).
 - Pay additional overtime owed.

Converting Salary to Hourly and Percentage Bonus

Overall Compensation



- Salary
Converted to
Hourly Rate
Income
- Percentage
Bonus

- **Goal:** Pay same overall compensation with a bonus, but without calculating overtime by the week.
 - Divide total prior bonus by total prior compensation (salary plus bonus).
 - Enter into contract.
 - Multiply total earnings in period by percentage.

Final Plan of Action



- Determine the appropriate classification of employees.
- Revise job descriptions to reflect the appropriate duties and classifications for each employee.
- Evaluate the benefit of adjusting salaries to maintain exempt status.
- Evaluate the impact of converting currently exempt employees to hourly non-exempt employees entitled to overtime.
- Evaluate the benefits and drawbacks of offering a bonus (discretionary, nondiscretionary periodic, or percentage).
- Restructure to efficiently staff based on company needs.

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