



Adapting to Changes in the Overtime Rules – How to Update Your HR Practices

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Your Presenters



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Agenda

- So, what's happening now?
 - How will this impact nonprofits?
 - What do nonprofits need to do now?
 - What do nonprofits need to do going forward?
 - Questions?
 - Where to get more help
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So, what's happening now?

Both the US Department of Labor (DOL) and Washington State Department of Labor & Industries (L&I) are changing the salary level requirements for employees to be considered exempt and not paid overtime.

DOL as of 1/1/20 = \$684/week or \$35,568/year

L&I as of 7/1/21 = \$675/week or \$35,100/year

L&I Salary Threshold Increase Implementation Schedule

Date of proposed changes	7/1/2020	1/1/2021	1/1/2022	1/1/2023
1-50 Employees	\$675 \$35,100	\$827 \$43,004	\$986 \$51,272	\$1,008 \$52,416
51+ Employees	\$675 \$35,100	\$965 \$50,180	\$986 \$51,272	\$1,152 \$59,904

As of 12/2019

How will this impact nonprofits?

For 2020, impact should be limited as the salary threshold will be at \$684/week or \$35,568 annually.

Starting 1/1/21, increasing number of employees will have to be reclassified as non-exempt, and paid for the overtime they work.

The gray area where there's a heightened risk of misclassifying employees will be much smaller (if not non-existent) by 2028.

What do nonprofits need to do now?

- Review job descriptions to ensure jobs classified as exempt meet the duties test of whichever exemption applies.
 - Determine if any employees will be impacted as of 7/1/20 and adjust accordingly.
 - Look ahead to 2021 and beyond, to determine how many employees will need to be reclassified at that time.
 - Keep in mind the impact this will have on staff, both financially and psychologically.
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Strategies to Adjust

- Increase staff members' pay to meet the required salary threshold
 - Convert the staff member to non-exempt
 - Reduce the amount of overtime staff are working
 - Budget for anticipated overtime pay
 - Restructure jobs so overtime isn't needed
 - Change your work week to better control overtime
 - Hire more staff (versus paying overtime) or outsource
 - Cut costs elsewhere to offset the anticipated overtime
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What Not to Do

- Giving compensatory (“comp”) time in lieu of overtime pay
 - Allowing employees to volunteer time over 40 hours/week
 - Re-classifying employees as independent contractors
 - Change job titles (unless job duties change also)
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Example: Program Manager

You are a small organization (less than 50 employees). Sonja's job has been analyzed and meets the duties test for an Administrative exemption. Sonja is currently paid on a salaried basis, at a rate of \$800 per week (\$41,600 per year).

- Does Sonja meet the three tests for exemption in 2020? Yes
 - Will Sonja still meet the three tests as of 1/1/2021? No; the salary threshold will go up to \$827/week (\$43,004/year) on 1/1/21.
 - What are your options?
 - If you plan to give Sonja a 3% increase as of 1/1/2021, that would take her to a weekly salary of \$824 versus the 1/1/2021 requirement of \$827. Since she's only \$3/week short, the easiest solution is to raise her pay to \$827.
 - OR you could reclassify her as non-exempt and pay her on an hourly basis.
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Example: Program Manager

However, as of 1/1/2022, the salary level requirement will go up to \$986 per week (\$51,272/year). Sonja, even with another 3% jump, will still be at just \$849, well below the requirement. So she will need to be reclassified as non-exempt.

BUT, suppose Sonja routinely works 50-hour weeks. Then one strategy would be to determine whether to pay the overtime, or alternatively hire an additional staff member.

Sonja's overtime rate (1.5x her regular rate of pay which is \$21.225/hour) will be \$31.84/hour. So that 10 hours of overtime per week will cost you \$318.40. Since you probably can't hire someone for that amount, your best solution is to pay the overtime.

Example: Program Manager

- BUT, suppose Sonja routinely works 60-hour weeks (NOT recommended).
 - The overtime is now costing you \$636.76 per week.
 - In that case it might make more sense financially to hire someone at a lower pay rate to take over some of Sonja's work.
 - The same may be true if you have multiple employees in the same job who all work regular overtime.
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Timekeeping Requirements for Non-Exempts

- Must track hours worked as well as total hours paid
 - Don't allow non-exempt employees to not report overtime
 - Consider not allowing non-exempt employees to check email outside regular working hours
 - Be careful with indirect time that may be compensatory – travel between locations, training time, out-of-town travel, on-call time, etc.
 - Ensure non-exempt employees take breaks and lunches
 - If a complaint is filed, the burden of proof is on the employer
 - Unless necessary for a business reason, don't require exempt employees to track/report hours worked
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What do nonprofits need to do going forward?

- If not already done, review classifications in light of the new DOL salary threshold as of 1/1/20 and make any needed changes.
 - Continue monitoring each year, looking at how the salary thresholds will change the next year and how many staff will be impacted, and plan ahead for any adjustments you will need to make.
 - Communicate what's happening to staff before changes are made.
 - Be prepared for honest discussions with employees who question their classification.
 - As staff fall below the L&I salary requirements and are reclassified, be prepared for pushback.
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Communicating Changes

- Do a general announcement now, so employees know changes are coming.
 - If you are reclassifying because the job doesn't meet the duties test, consider paying back overtime.
 - If the job has been changed, make sure the employee gets an updated job description.
 - Communicate reclassifications in person, with a follow-up written notification.
 - Make sure reclassified employees are tracking/reporting time worked and paid time off for payroll purposes.
 - Have a plan to deal with pushback and/or employees who indicate they are not planning to report their overtime.
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Final Thoughts

- If you have employees in multiple states, be sure you check the salary thresholds for those states also. New York, Pennsylvania and California have higher thresholds than the DOL; increases are proposed in Maine, Michigan, Massachusetts and Colorado.
 - Also check the rules for when overtime is payable; in the State of Washington it's over 40 hours worked in a workweek; but in California it's over 8 hours worked in one workday.
 - Beyond the practical aspects of these changes, don't lose track of the moral and ethical issues of how we treat employees.
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Questions?



Where to find more information

Resources:

- [L&I Implementation Chart](#)
 - [Small Entity Compliance Guide](#)
 - [Compliance Checklist](#)
 - [Sample Timesheet \(Excel\)](#)
 - [Sample Change Notification Letter](#)
 - [DOL Fact Sheet #14a: Nonprofit Organizations and the Fair Labor Standards Act](#) (re employees volunteering)
 - [DOL Fact Sheet #21: FLSA Recordkeeping Requirements](#)
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Where to find more information

Helpful websites:

- L&I Q&A re overtime rule changes:
<https://lni.wa.gov/workers-rights/wages/overtime/changes-to-overtime-rules-q-a>
 - L&I Resource Page: <https://lni.wa.gov/workers-rights/wages/overtime/overtime-rules-resources>
 - Department of Labor:
<https://www.dol.gov/agencies/whd/overtime>
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Thank you!

501 Commons

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