



U.S. DEPARTMENT OF LABOR OUTLINES OVERTIME RULES FOR HIGHER EDUCATION EMPLOYERS ADDRESSING QUALIFYING CERTIFIED ATHLETIC TRAINERS

In April 2018, the U.S. Department of Labor (DOL) issued its first wage and hour opinion letters¹ since President Trump took office along with a new [fact sheet](#) on higher education institutions and overtime pay exemptions under the Fair Labor Standards Act (FLSA), including overtime pay for qualifying certified athletic trainers. The fact sheet does not reflect a change in the DOL's position on exemptions, but it does clarify how the DOL views a variety of higher education jobs. The fact sheet states that the DOL is undertaking rulemaking to revise current regulations governing the exemption of executive, administrative, and professional employees from the FLSA's minimum wage and overtime pay requirements. Until a final regulation is issued, the DOL will enforce [current regulations](#) that were in effect as of November 30, 2016.

Under the FLSA, non-exempt employees must receive a minimum wage and overtime wages for work conducted in excess of 40 hours a week. However, the FLSA also allows certain employees to be exempt (white collar exemption) from these minimum wage and overtime requirements if they work in executive, administrative, professional or outside sales duties and can meet the following requirements:

- Employee must be paid on a salary basis that is not subject to reduction based on the quality or quantity of work conducted (e.g., paid on an hourly basis).
- Employee must receive a salary at a rate not less than \$455 per week.
- Employee primary duties must involve the kind of work associated with the exempt status categories allowed under law (executive, administrative, professional, outside sales).

Exemptions for Certified Athletic Trainers

The DOL fact sheet makes clear that in higher education, learned professionals including certified athletic trainers can be eligible for the professional exemption from minimum wage and overtime rules if they satisfy the white collar exemption requirements above as well as the following:

- The employee's primary duty is the performance of work requiring advanced knowledge.
- The advanced knowledge is in a field of science or learning.
- The advanced knowledge must be acquired by a prolonged course of specialized intellectual instruction.

Background and Timeline on Overtime and Minimum Wage Regulations

- On March 13, 2014, President Obama signed a Presidential Memorandum directing the DOL to update the regulations defining which white-collar workers are exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements. The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

¹ The opinion letters focus on the following issues: travel time compensability under FLSA; calculating rest breaks for those with serious health conditions under the FLSA; and whether lump sum earnings qualify for child support payments.

- On July 6, 2015, the DOL issued a Notice of Proposed Rulemaking (NPRM) – [Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees](#) (80 Fed. Reg. 38515, July 6, 2015). The DOL proposed to update and revise the regulations issued under the FLSA implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. To be considered exempt, employees would need to meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The standard salary level required for exemption would be \$455 a week (\$23,660 for a full-year worker). The exemption standard was last adjusted in 2004. The DOL proposed to raise the salary threshold under which white-collar workers and highly compensated employees are exempt from FLSA overtime pay requirements to \$913 a week (\$47,476 annually).
- On May 23, 2016 the [Final Rule](#) was published in the Federal Register and was scheduled to take effect on December 1, 2016. DOL estimated that this change would make 4.2 million currently exempt workers eligible for overtime pay, assuming employers do not change employees' salaries and/or relevant duties in order to avoid exemption.
- November 22, 2016, U.S. District Judge Amos Mazzant III (President Obama appointee) of the Eastern District of Texas, issued a temporary injunction delaying implementation of the rule in order to determine DOL's authority to issue the rule. The injunction was later extended on more than one occasion.
- On July 28, 2017, the DOL submitted a court filing which stated, "The department has decided not to advocate for the specific salary level (\$913 per week) set in the final rule at this time and intends to undertake further rulemaking and will determine what the salary level should be.
- On April 20, 2018, the DOL under the Trump Administration issued its first wage and hour opinion letters and a fact sheet stating that new rulemaking is imminent to revise current regulations located at 29 C.F.R. part 541, governing the exemption of executive, administrative, and professional employees from FLSA minimum wage and overtime pay requirements.