There has been a lot of buzz and media coverage about the new overtime rules. This guidance explains how the new overtime rules impact school districts, and which school employees fall under the new rules.

The rules do not impact pay for educator employees, which for the purposes of this guidance means school employees who are teachers, administrators, counselors or other employees with a teaching certificate working in a position that requires certification. For non-educator employees who are salaried and classified as “exempt” under the FLSA, such as department directors and managers, those employees must be paid a minimum salary of $47,476/year ($913/week) or be paid at least minimum wage plus overtime (or compensatory time) by no later than December 1, 2016.

The U.S. Department of Labor has updated its regulations and redefined which employees are entitled to overtime pay. The DOL’s goal was to ensure that more employees are receiving overtime pay when they work long hours and that employers are not evading the overtime requirements by paying employees on a salary basis. The DOL achieved this goal by increasing the minimum salary requirement for “white collar” workers from $23,660/year ($455/week) to $47,476/year ($913/week). White collar workers making less than the new salary threshold must receive appropriate compensation for hours worked in excess of 40 hours per week.

The regulations will go into effect on December 1, 2016. In order to ensure compliance with the FLSA, school districts should conduct an audit of all non-educator staff being paid on a salary basis and restructure positions and compensation where necessary before the beginning of the school year, if possible.
Employees must be paid on an hourly basis at least minimum wage (currently $7.25/hour) and overtime pay unless the employee qualifies for a specific exemption. Exempt employees are known as “white collar” workers, because their job duties generally require more education or formal training and are performed in office setting.

In order to meet the white collar exemption, a three-part test must be met:

1. **Salary Basis**: The employee must be paid a predetermined and fixed salary.

2. **Salary Level**: The employee must be paid at least $47,476/year ($913/week) as of December 1, 2016.

3. **Duties**: The employee must perform executive, administrative or professional duties. Job titles do not control and have no bearing on exempt status.
   - **Executive**: primary duty must be management, must customarily and regularly direct the work of two or more full-time employees, and must have the authority to hire or fire other employees or make recommendations on hiring/firing
   - **Administrative**: primary duty must be the performance of office or non-manual work directly related to management or operations, and primary duty must include the exercise of discretion and independent judgment with respect to significant matters (ex. superintendent, administrator, building principal)
   - **Professional**: primary duty must be the performance of work requiring advanced knowledge, advanced knowledge must be in a field of science or learning, and the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction (ex. RNs, school psychologists, occupational therapists, speech language pathologists)
In general, non-educator employees who: (a) serve as directors, supervisors, and managers; and (b) whose job duties are not directly related to instruction but rather to general business matters will be impacted by the updated overtime regulations if they currently are paid a salary of less than $47,476/year ($913/week). This could include:

- CFOs, Finance Directors, and Accounting Specialists
- Facilities Directors
- Transportation Directors
- Nutrition/Food Service Directors and Cafeteria Managers
- Public Relations Directors and Communications Coordinators
- Technology/IT Directors
- Safety and Security Directors

The job duties of non-educator employees must be carefully analyzed to determine if they meet one of the white collar exemptions. Keep in mind that, if an employee is exempt under the administrative exemption and their job duties are directly related to instruction (such as process coordinators and instructional coaches), then the salary threshold does not apply – the district is only required to pay them at least the entrance salary for teachers. For all other exempt employees, the district must pay at least the new salary threshold (as of December 1) or pay at least minimum wage plus overtime.

School nurses (RNs): Exempt under the professional employee exemption and must be paid a salary meeting the new threshold, or at least minimum wage plus overtime/comp. time

- School Nurses (LPNs): Not exempt and must be paid at least minimum wage plus overtime/comp. time
- School Psychologists and Occupational Therapists: To the extent they are employees of the district and not independent contractors, they likely meet the professional exemption and must be paid a salary meeting the new threshold, or at least minimum wage plus overtime/comp. time
- PATs (even if they are certificated): Job duties should be carefully analyzed, but most likely these employees are not exempt and they must be paid at least minimum wage plus overtime/comp. time
- Teacher Aides (even if they are certificated): Job duties should be carefully analyzed, but most likely these employees are not exempt and they must be paid at least minimum wage plus overtime/comp. time
- Other employees who are certificated but who are working in a position that does not require certification: Job duties should be carefully analyzed, but most likely these employees are not exempt and they must be paid at least minimum wage plus overtime/comp. time
1. Identify all non-educator employees who are paid less than $47,476/year ($913/week)* on a salary, rather than hourly, basis.

2. Carefully review the duties of each identified position to ensure that the position properly can be categorized as exempt. This is a good opportunity to ensure that no positions within your district have been misclassified.

3. For all exempt positions which are assigned a salary of less than $47,476/year ($913/week), decide whether to: (a) increase the salary to meet the new threshold; or (b) restructure the position as non-exempt so that the employee tracks their hours and will be paid overtime or granted compensatory time.
   - As you conduct this analysis and adjust compensation for different positions, ensure that positions which require a similar skill-set, degree of knowledge, education, and experience are paid similarly. This will help to prevent discrimination claims.

*Note that the DOL will increase the salary threshold every 3 years, beginning January 1, 2020.
4. Review and revise job descriptions for all positions to ensure that duties are correctly stated and that the position is correctly classified as exempt or non-exempt.

5. Ensure that non-educator employees who are “exempt” are receiving compensation of at least $47,476/year ($913/week) by December 1, 2016.
   - For any exempt employees who are issued a contract, ensure the contract is for no less than $47,476/year ($913/week) in order to prevent exposing the district to a claim that it is providing illegal bonus compensation (the Missouri Constitution prohibits public entities from paying additional compensation, beyond the amount stated in a contract, to its employees and so it could be problematic to revise a contracted employee’s salary in the middle of a school year).

6. As you make salary adjustments, your district will want to consider whether to adjust the salaries of educator employees - administrators, teachers, counselors, etc. - whose assigned salary is less than the new threshold. If certain non-educator staff members are receiving a raise due to the new overtime regulations, then in may be appropriate to adjust salary schedules for educator employees for purposes of equity.
Steps for Moving Former Exempt/Salaried Employees to Non-Exempt Status

If you have an exempt employee who is paid less than $47,476/year ($913/week), you are not required to increase their pay but must track their hours and ensure that they are paid an appropriate overtime rate or granted compensatory time for any time worked in excess of 40 hours/week.

1. The employee's position will be considered non-exempt.

2. You may pay an hourly rate or keep the employee on a salary basis. If you continue to pay the employee on a salary basis, the district must:
   - Calculate an hourly rate for overtime pay.
   - Keep accurate records of the time worked by the employee. Clearly communicate working hour expectations to the employee (including working from home and checking email), and train the employee on how to accurately record their time.
   - Consider developing a written policy for the employee's work hours, including overtime work.
   - Pay the employee overtime pay (or award compensatory time) for any hours worked in excess of 40 hours/week.

3. Consider restructuring the employee’s job duties to remove exempt duties, and shift those duties to an exempt position.

4. Budget and plan for anticipated overtime costs. Consider hiring additional hourly staff to reduce overtime pay (or compensatory time awarded).

5. Communicate with employees who will become non-exempt and have to track their hours.
   - Address any morale issues, including a perception that the employee has been demoted because they are no longer “salaried” and have to track their hours.
   - Address practical issues, like restrictions on working from home and reading/sending emails outside of set work hours.
   - Be transparent and communicate that federal law concerning which employees may be paid a set salary has changed, which has required the district to restructure positions.

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Planning for Future Updates to the Salary Threshold

When deciding whether to keep exempt, non-educator employees who are earning less than the $47,476/year salary threshold at their same rate of pay (and pay them overtime/comp. time) or to increase their compensation above the new threshold, please keep in mind that the DOL’s updates are not a one-time event. The DOL will issue automatic updates to the salary threshold every 3 years. The first update is anticipated to go into effect on January 1, 2020 and to be around $51,000/year. Employers will be given approximately 5 months’ advance notice of the update. This can be particularly problematic for school districts who budget for upcoming school years in the spring and early summer, and so your district will need to plan and budget for the increase in the Spring of 2019.