

# The New Wage-Hour Rules

Earth-Shattering or  
Simply Down to Earth?

September 12, 2016

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# FAIR LABOR STANDARDS ACT

- Minimum Wage
- Overtime
- Record-keeping
- Child Labor
- Predates Title VII, ADA, ADEA, Equal Pay Act – different purpose, to spread around the available work by making it less expensive to hire multiple employees

**EMPLOYEE RIGHTS**  
**UNDER THE FAIR LABOR STANDARDS ACT**  
THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

**FEDERAL MINIMUM WAGE**  
**\$7.25 PER HOUR**  
BEGINNING JULY 24, 2009

**OVERTIME PAY** At least  $\frac{1}{2}$  times your regular rate of pay for all hours worked over 40 in a workweek.


**CHILD LABOR** An employee must be at least **16** years old to work in most non-farm jobs and at least **18** to work in non-farm jobs declared hazardous by the Secretary of Labor.  
Youths **14** and **15** years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:  
**No more than**  
• **3** hours on a school day or **18** hours in a school week;  
• **8** hours on a non-school day or **40** hours in a non-school week.  
Jobs, work may not begin before **7 a.m.**, or end after **7 p.m.**, except from June 1 through Labor Day, when evening hours are extended to **9 p.m.**. Different rules apply in agricultural employment.

**TIP CREDIT** Employees of "tipped employees" must pay a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employer's tip combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

**ENFORCEMENT** The Department of Labor may recover back wages either administratively or through court action, for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action.  
Employers may be assessed civil money penalties of up to \$1,100 for each willful or repeated violation of the minimum wage or overtime pay provisions of the law and up to \$11,000 for each employee who is the subject of a violation of the Act's child labor provisions. In addition, a civil money penalty of up to \$50,000 may be assessed for each child labor violation that causes the death or serious injury of any minor employee, and such assessments may be doubled, up to \$100,000, when the violations are determined to be willful or repeated. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Act.

**ADDITIONAL INFORMATION**

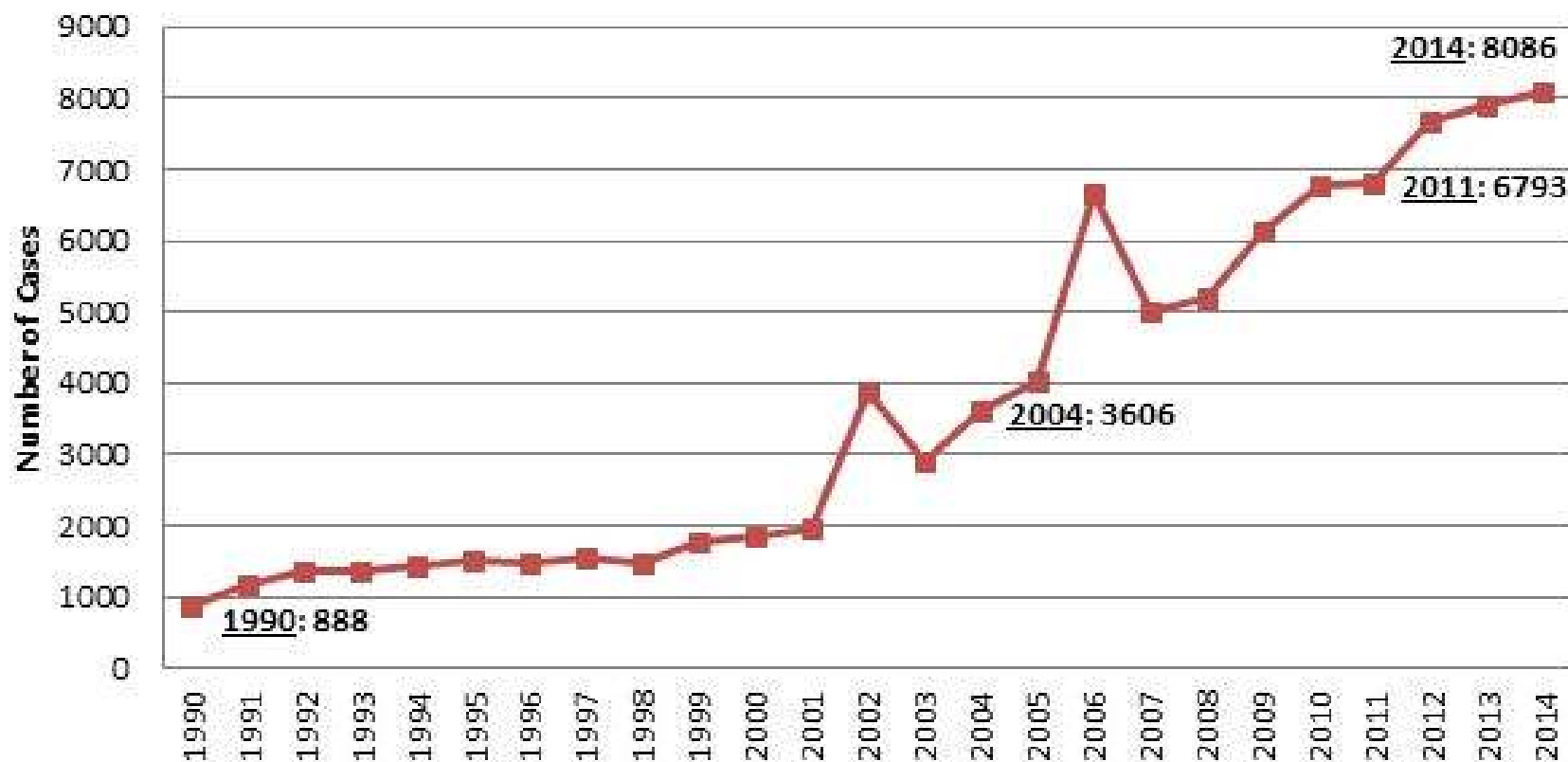
- Certain occupations and establishments are exempt from the minimum wage and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands.
- Some state laws provide greater employee protections; employers must comply with both.
- The law requires employers to display this poster where employees can readily see it.
- Employees under 20 years of age may be paid \$4.25 per hour during their first 90 consecutive calendar days of employment with an employer.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

For additional information:  
**1-866-4-USWAGE**   
(1-866-487-6243) TTY: 1-877-889-5627  
**WWW.WAGEHOUR.DOL.GOV**

U.S. Department of Labor Wage and Hour Division



## FLSA Cases Filed by Calendar Year



Source: [www.wagehourinsights.com/dol-news](http://www.wagehourinsights.com/dol-news)

# Increased Federal Enforcement

- DOL reported it found OT violations in 10,496 cases in FY 2015, recovering \$137,701,703 in back wages.



- DOL “will not rest until the law is followed by every employer”

# FLSA Damages



- Lost wages
- Liquidated damages (i.e., double the lost income amount)
- Costs of suit, plus whatever a court deems to be “reasonable attorney’s fees” (often more than the lost wages amount)

FLSA imposes potential liability on *individual managers and supervisors* who violate the law!

# New Overtime Rules

- Fair Labor Standards Act (FLSA) generally requires payment of overtime for work in excess of 40 hours per week
- Many exceptions/exemptions but only “white collar” exemption changing
- “White collar” exemption is really the Administrative, Executive, Professional exemption



# “White Collar” Exemptions

- Executive
- Administrative
- Professional
- Highly Compensated





# “White Collar” Exemption Basics

- Paid on a Salary Basis; and
- Paid at least the minimum Salary Level; and
- Performs Exempt Duties (as specified in regulations. *The exempt duties tests for White Collar remain the same!*)



# New Overtime Rules

- White Collar exemption requirements:
  - Employee paid on a salary basis
  - Salary meets a minimum amount
  - Employee performs certain duties
- Liberal interpretation of duties test by employers has led to audits and litigation over misclassification
- Major change- increase in minimum salary needed even to be considered for White Collar



# New Overtime Rules

- Current minimum salary under White Collar exemption: \$23,660/annual or \$455/week
- Used to be around \$255/week, or about \$13,000. That was updated about fifteen years ago.
- New minimum salary under White Collar exemption: \$47,476/annual or \$913/week
- No change in requirements to pay on a salary basis and meet the duties test



# Biggest Change

## Increased Minimum Salary Level

Increased to 40<sup>th</sup> percentile of weekly earnings for FT salaried workers in the lowest-wage census region (as compiled by Bureau of Labor Statistics)

**\$913 per week (or \$47,476 annually)**

# New Overtime Rules: Timing Issues

- Final rules announced May 23, 2016
- Effective *December 1, 2016*
- Minimum salary will automatically increase every 3 years
  - DOL estimates \$51,168/annual \$984/week effective 1/1/2019

# New Overtime Rules

- New: incentive compensation can count towards 10% of minimum salary
  - Commissions
  - Non-discretionary bonuses
  - Must be paid at least quarterly
  - “Catch-up payments” allowed if commissions fall short
- Can reduce minimum salary to \$42,728/annual (\$822/week)



# New Overtime Rules- Other Exemptions

- Highly Compensated Employee exemption (minimal “duties” required – a “relaxed duties test”)
  - Change from \$100,000 minimum annual salary to \$134,004
- Other exemptions – not “white collar” not changing:
  - Agricultural
  - Outside sales
  - “Learned” professional (teachers, doctors, lawyers)



# Where do they get these numbers?

- Salary threshold for Highly Compensated Employee exemption will increase to 90<sup>th</sup> percentile of weekly earnings for FT salaried workers nationally as compiled by BLS
  - Increase from \$100,000 to \$134,004 per year





# New Overtime Rules- Misconceptions

- Employees making less than the new salary level can no longer be paid on a salary basis
- For current exempt employees working more than 40 hours per week the change will require an increase in their total compensation (and increase in employer costs)





Non-exempt employees must receive 1½ times the regular rate of pay for all hours worked over 40 in a workweek.



# New Overtime Rules- 5 Primary Strategies

1. Retain overtime exemption by increasing employee salary to new minimum and checking for compliance with the duties test (but watch out for future automatic increases)
2. Convert to non-exempt hourly paid and absorb cost of overtime at 1½ times hourly rate



# New Overtime Rules- 5 Primary Strategies

3. Convert to non-exempt hourly but remain cost neutral (forbid overtime and enforce it)
4. Convert to non-exempt but continue to pay on a salary basis and absorb cost of overtime at one-half hourly rate // fluctuating work week
5. Convert to non-exempt but continue to pay on a salary basis but remain cost neutral





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**ANY QUESTIONS?**



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