

## U.S. Department of Labor Final Overtime Rule<sup>1</sup>

### QUESTION 2:

#### I Own a Small Business. Is My Business Covered by This New Rule?

**Yes!** (*More likely than not.*) There are no special exceptions in the Fair Labor Standards Act (FLSA) for small businesses (*per se*) or for nonprofit agencies. A business enterprise OR its employees can be covered under the FLSA and, therefore, subject to the new overtime rule.

A business enterprise is covered by the FLSA if it has an annual gross volume of sales made or business done totaling \$500,000 or more. This is referred to as “enterprise coverage.”

If the business enterprise does not meet this threshold, individual employees are still covered if they engage in interstate commerce or in the production of goods for commerce. This is called “individual coverage.” To meet this requirement, an employee’s work need only involve or relate to the movement of persons or things across state lines including, for example, such tasks as:

- Making out-of-state phone calls.
- Receiving/sending interstate mail or electronic communications.
- Ordering or receiving goods from an out-of-state supplier.
- Handling credit card transactions or performing accounting or bookkeeping for such activities.

Clearly, most employees will be covered by the individual coverage test even when enterprise coverage does not apply! To assist smaller businesses in their compliance with the Final Rule, the DOL published a [\*Small Entity Compliance Guide to the Fair Labor Standards Act’s White Collar Exemptions\*](#). This guidance provides basic information about the FLSA and the three tests for claiming a white collar overtime exemption.

Outside of these coverage tests, employees who work at hospitals, businesses that provide medical or nursing care for residents, schools, and public agencies are always covered.

Even if your business and employees are not covered by the FLSA, more likely than not, there are state wage and hour regulations that you must abide by, including, among others, salary requirements and/or duties tests that must be met in order for you to classify a position as exempt from overtime.

---

<sup>1</sup> This client advisory is excerpted from the Seawright & Associates May 31, 2016, e-bulletin, “U.S. Department of Labor Final Overtime Rule: Ten Things Every Employer *Must* Know Before Making Changes.” To obtain the full content of the e-bulletin, contact [Seawright & Associates](#)