

U.S. Department of Labor Final Overtime Rule¹

QUESTION 4:

What Are the Tests for an Overtime Exemption?

That's a loaded question. To qualify for a white collar overtime exemption, in addition to receiving the guaranteed minimum salary amount, an employee must meet the duties tests for the exemption being claimed. The Final Rule did not change or revise the duties tests for any of the white collar exemptions. You can obtain a summary of these tests by clicking [HERE](#).

If you are an individual business client using our HR Consultation Service, you may also contact us to discuss Department of Labor (DOL) enforcement practices pertaining to the duties tests.

Over many years, the DOL has generated volumes of information about each of the white collar exemptions in an effort to clarify enforcement practices and their interpretation of the tests. Nevertheless, confusion abounds and, unfortunately, the DOL did nothing to simplify or clarify the white collar exemption tests in the Final Rule.

Although the Final Rule did not include simplifications or revisions to the duties tests, **the DOL provided some insight into an important concern it had about salaried exempt managers meeting the duties tests for an Executive, Administrative, or Professional (EAP) exemption.** The concern was illustrated by these examples:

1. Situations where lower-level supervisors or managers perform exempt duties less than 50 percent of the time, but employers claim that these duties are sufficiently important to be considered part of the primary duty of managing.
2. Situations where lower-level supervisors or managers perform nonexempt duties concurrently with exempt duties. For example, a restaurant manager who works a cash register or a manager demonstrating to a new employee how to perform a task.

In the Final Rule, the DOL made it clear that a disproportionate amount of time spent on nonexempt duties (more than occasional) may call into question the exempt classification of a worker. Specifically, the Final Rule suggests that, as an enforcement practice, the DOL will closely examine situations where a manager must routinely perform significant amounts of nonexempt work because the employer does not provide appropriate staffing on all shifts.

This situation is in contrast to one where an exempt manager makes the decision *using his or her own discretion* that he or she needs to perform nonexempt duties to help the operation run smoothly. In these situations, the DOL believes that the manager's primary duty continues to be managing his or her staff and the operations of the department.

Based on this crumb of insight from the DOL, to minimize the risk of losing an EAP exemption, employers should ensure that white collar exempt employees do not routinely perform nonexempt work when they are short-staffed due to nonexempt employee absences or vacancies.

¹ 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](#)