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Policy

## Department of Labor Releases Overtime Rule *Employers Have Six Months to Prepare*

### Resources

[Final Rule \(29 CFR Part 541\)](#)

[Guide for State and Local Governments](#)

[Overtime Rule Fact Sheet](#)

[FAQ](#)

### Governments Have Discretion to Choose Between Several Options for Complying

- \* Raise Salaries
- \* Pay Overtime Above Salary
- \* Evaluate and Realign Employee Workload

Today the Department of Labor finalized a rule ([29 CFR Part 541](#)) that will raise the salary threshold at which eligible workers qualify for overtime pay from \$23,660 to \$47,476 per year. The threshold will automatically increase every three years, based on wage growth over time. The final rule is effective December 1, 2016. It does not make any changes to the duties test for executive, administrative, and professional employees.

### What Should My Tribe Do to Prepare?

#### 1. **Calculate Potential Costs:**

Tribal employers should analyze any new economic development projects and existing budgets that will be effected by the added salary expense. Many tribal programs have not budgeted for the increased expense and do not have the resources to increase salaries above the overtime threshold. Additionally, if your tribe has a match retirement plan, you will need to consider the increased amount you will be contributing to annually for higher salary employees. NAFOA predicts social programs may be hit the hardest. Your tribe may want to re-evaluate contributions from enterprises and other revenues to support the added salary expense.

\* Utilize Comp Time  
(not available to  
private sector  
employers)

**2. Analyze Positions Affected:**

Tribal employers should identify positions that may be subject to the salary threshold increase. The evaluation should consider employees supported by federal grants, budgeted tribal programs, and how operations will be impacted by reclassification to non-exempt status and/or salary increases by those impacted. NAFOA recommends tribes review the budget variance threshold and determine whether to convert positions effected to non-exempt, raise the salary level, or engage in new operation timekeeping rules to accommodate the new salary threshold.

**3. Keep Track of Work Hours:**

For employees who were previously exempt from overtime pay, tribal employers should begin to keep track of work hours to predict how much overtime you will have to pay starting in December.

**4. Consider Offering Comp Time:**

State, local, and tribal governments have the option to arrange for their employees to earn comp time instead of cash payments for overtime hours. Comp time is paid at the regular rate of pay and may save in tribal salary expenses. The comp time must be provided at a rate of one-and-one-half hours for each overtime hour worked. For example, if an employee worked 44 hours in a single workweek, they would be entitled to 6 hours of comp time (1.5 x 4 hours).

**5. Invest in Timekeeping Systems:**

Tribal employers should also prepare to implement changes in payroll and timekeeping software. Your tribe may want to assess whether additional training is needed for staff regarding new timekeeping operational practices for newly reclassified non-exempt employees.

Since the proposed rule was released in 2014, NAFOA has been advocating for tribal governments to reduce the overtime threshold, which was originally proposed at \$50,440.

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