



What the New FLSA Overtime Rules Mean for Your Practice

How many exempt employees does your dental practice have—employees who are paid on a salary basis, regardless of their exact hours worked, and who are ineligible to earn overtime pay? Many practices have one or two: it's often an office manager, or maybe a team leader. Regardless of your answer, at many practices, this number might change!

In May 2016 the Department of Labor (DOL) announced a new minimum required salary for any employee to be considered exempt from overtime pay: \$913 per week, or \$47,476 per year. This is a significant rise from the previous minimum, which was only \$455 per week, or \$23,660 per year. In fact, it's more than double.

Implementing this change may be difficult, but by December 1 of this year, all employers, including every dental office across the country, must find a way to comply. So, for all exempt employees whose salaries currently fall under the new threshold, practice owners and managers need to evaluate your options.

Why is this changing, and what are your choices?

The statute that determines when an employee can and cannot be classified as exempt is called the Fair Labor Standards Act, or FLSA. When the FLSA was originally created, exemption was intended to apply only to employees who were paid fairly well and whose position involved some autonomy. However, the salary threshold for exemption had become outdated—it was last updated in 2004, and \$23,660 per year no longer stretches very far in 2016. The DOL felt this salary was now considered so low that it applied to many employees who should be eligible for overtime if they work over 40 hours.

For this reason, the required minimum salary for exemption has now been raised to \$913 per week, or \$47,476 per year. The DOL's goal is to bump many exempt salaried employees who cannot currently earn overtime into non-exempt status, with paid overtime when applicable. Alternatively, employers could choose to raise affected employees' salaries so they once again fulfill all requirements for exemption.

Unfortunately, these changes will be disproportionately hard for small businesses. Not every business can afford to increase exempt employees' pay, reclassify and pay them overtime, or reduce hours and hire additional staff so no one works more than 40 hours per week. Regardless of these difficulties, **the DOL's compliance deadline is December 1, 2016**, so it's time to make plans.

Following the rules: What your office needs to do

To prepare, first determine how many salaried exempt employees are likely to be affected at your practice. It could be one (maybe you!), or none, or several, depending on business size and specialty.

And remember that exemption isn't just a question of whether an employee is paid on a salary basis and above the minimum threshold. There's a lot more to it! Exempt office managers or team leaders, for instance, must spend over 50 percent of their time managing at least two other full time employees, among other requirements. For so-called "white collar" exemption to apply, the employee's administrative, executive, or professional job duties must meet a rigorous set of criteria. **If all requirements for exemption are not met, an employee is not exempt from overtime pay.**

Office managers and team leaders are some of the most likely dental employees to be affected by the new FLSA requirements. Hygienists should almost never be considered exempt in the first place. If you DO have exempt hygienists, please call us to make sure they've been classified correctly, because now is your best chance to fix this dangerous issue safely!

What about associate dentists? Dentists are exempt under both the current and new law, regardless of salary (the salary level is not required for doctors). **Other dental employees are usually non-exempt**, but check with an HR expert whenever there's ANY doubt. Mistakenly assigning exempt status to employees who do not meet the criteria can cause huge expenses for the practice, so you should self-audit regularly to avoid errors, and call an expert if you need any help.

Once you know which employees will be affected, you can take steps to prepare. For each previously-exempt employee whose salary falls below the new threshold, the practice will need to:

- Increase their salary enough to maintain exemption under the new rules; OR
- Accept that this employee is now non-exempt.
- Have all non-exempt employees track their time. Pay them overtime whenever they work over 40 hours in a workweek (or 8 per day in CA).
- For any employees whose status changed, consider removing duties or hiring additional staff to limit overtime expenses.

To decide which option is in your financial best interests, try CEDR's new overtime calculator. We'll be providing you with a link to this and other resources for dealing with these FLSA changes.

There's one more practical consideration that doctors and office managers must keep in mind: **No non-exempt employee may ever waive their legal right to overtime pay, or work off the clock.** Overtime is best prevented in advance, by advising employees that it must be authorized first. (This policy should be part of your employee handbook.) The practice may issue a Corrective Action to non-exempt employees who work unauthorized overtime, but all overtime hours must be paid out correctly once they have been worked.

Note that if your practice is in California, you will also be affected by these rule changes, but not as drastically. California's current exemption rules already require a higher salary threshold than the current federal rule, but it's less than the new level, so you too must comply.

Good, bad, or maybe both

Many dental practice owners, along with small business owners everywhere, are justifiably worried about these new requirements. Payroll expenses could increase drastically if higher salaries or more overtime hours are paid out, and productivity will decrease if you cut back on manager duties to limit overtime. Plus, exempt employees' whose salaries are raised may be happy, while others who are reclassified as non-exempt may be very annoyed at having to track their hours and give up schedule flexibility. All in all, these are difficult choices—but starting your compliance review now will minimize the pain of this transition.

Inconveniences and complexities aside, one good side effect of these changes is that **they give you a chance to make sure everyone in your office is classified correctly**, without raising the usual red "audit" flags caused by switching an employee's status out of the blue. Doctors and managers, this is your chance to review your books and get everything right.