

Pennsylvania Expands Overtime Pay Beyond Federal Thresholds

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Wage and Hour

Pennsylvania's Minimum Wage Act (MWA) has been expanded to increase the minimum salary an employee can earn and still be eligible for overtime.

Under the new law, beginning on January 1, 2020, workers who earn up to \$35,568 annually may qualify for overtime. That salary level increases to \$40,560 annually beginning on October 3, 2021, and will increase again to \$45,500 on October 3, 2022. Beginning in 2023, the salary threshold will adjust automatically every three years. The legislation permits up to 10 percent of those salary levels to be satisfied by commissions, incentive payments, and non-discretionary bonuses.

The legislation also amends the duties tests for executive, professional, and administrative workers who may be exempt from the overtime rules. The new criteria set forth in Section 5(a)(5) of the MWA now more closely tracks the criteria in its federal counterpart — the Fair Labor Standards Act.

Executive Exemption

To qualify for the executive exemption, an employee must meet the following criteria:

- Meet the salary basis test;
- Primary duty is management of the enterprise or managing a customarily recognized department or subdivision of enterprise; and
- Work requires customary and regular direction of at least two full-time employees.

Examples: CEO, CFO, human resources director, bank branch manager, and office manager.

Administrative Exemption

To qualify for the administrative exemption, an employee must meet the following criteria:

- Meet the salary basis test;
- Primary duty consists of office or nonmanual work directly related to management policies or general operation of employer or employer's customers; and
- Work requires the exercise of discretion and independent judgment.

Examples: academic advisor, consultant, insurance claim adjuster, and purchasing agent.

Professional Exemption

To qualify for the professional exemption, an employee must meet the following criteria:

- Meet the salary basis test;
- Primary duty consists of work requiring the knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study OR work that is original or creative in character in a recognized

field of artistic endeavor; and

- Work requires the exercise of discretion and judgment OR work requires invention, imagination, or talent in a recognized field of artistic endeavor.

Examples: CPA, attorney, doctor, architect, engineer, author, cartoonist, and musician.

Prior to this legislation, the Commonwealth's overtime pay regulations had remained unchanged since 1977. It is estimated that this new law will expand overtime pay eligibility to over 140,000 Pennsylvania workers.

For additional guidance on this issue, please contact a Jackson Lewis attorney.

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