



THE TEXAS MUNICIPAL LAW BULLETIN™

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NEW OVERTIME REGS IMPACT CITY BUDGETS

The new overtime rules require each city employer to review “exempt” employees’ salaries and hours. On May 18, 2016, the U.S. Department of Labor finalized regulations increasing the minimum annual salary requirement for an employee to be exempt from overtime from \$23,660 to \$47,476. These rules will not be effective until December 2016, but will affect budget planning over the summer.

Currently, all employers must provide overtime pay of time-and-a-half to each “nonexempt” employee if the employee works more than 40 hours in a seven-day work period (43 for certain police and fire). However, some employees are “exempt” from overtime pay, regardless of the number of hours they work in a week. To be exempt from overtime, an employee must: (1) meet the salary test of earning at least \$23,660 annually (increased by these rules to \$47,476); and (2) meet a job duties test related to the executive, professional, and administrative duties of employees. Generally, both tests must be met by the employee before an employer can withhold overtime pay from an employee.

Starting in December, an employee who meets the exempt job duties test and earns at least \$47,476 annually is not entitled to overtime pay for hours worked over 40 hours in a seven-day work period. A city has two options when handling an employee who performs exempt duties and who is earning between \$23,660 and \$47,476. First, the city could raise the salary of these exempt employees, and these employees would retain their overtime exemption. Or the city could maintain the same rate of pay for these exempt employees, but allow them to earn overtime pay of time-and-a-half for any hours worked over forty hours in a seven-day work period. The rule allows the minimum annual salary to be adjusted every three years by the agency.

Next Steps for Cities

- 1. Determine which employees are being treated as exempt.** Examine each employee’s job description and current pay scale to see who is being treated as an exempt employee, who should be treated as an exempt employee, and what the salary is for each exempt or would-be exempt employee.
- 2. Determine which exempt employees’ salaries will be affected.** Decide how each exempt employee will be treated if they are earning between \$23,660 and \$47,476, by either increasing the employee’s pay or providing them with eligibility for overtime.
- 3. Budget for the increased wages or overtime pay.** Planning for the budget should be considered now if your budget for any part of 2017 is adopted before January.

For more information from the Department of Labor, or to read the rules, please go to:

<https://www.dol.gov/sites/default/files/overtime-government.pdf>.

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