

# Fair Labor Standards Act (FLSA)



**VIRGINIA DEPARTMENT OF HUMAN  
RESOURCE MANAGEMENT**

**SENATE FINANCE COMMITTEE  
GENERAL ASSEMBLY BUILDING  
RICHMOND, VA**

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# FLSA - Overtime Rule - Highlights

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- Raises the **salary threshold** indicating eligibility from \$455/week (\$23,660 per year) to \$913/week (\$47,476 per year)
- Increases the total annual compensation requirement needed to exempt **highly compensated employees** from \$100,000 to \$122,148
- Automatically **updates** the salary threshold every three years, based on wage growth over time, increasing predictability
- **Strengthens overtime protections** for salaried workers already entitled to overtime
- Provides **greater clarity** for workers and employers
- Does NOT make any changes to the **duties test** for executive, administrative and professional employees
- Becomes **effective on December 1, 2016**

# FLSA Changes – Impact on State

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ISSUE	NUMBER
• New salary threshold to be exempt	\$47,476
• New total annual compensation needed to exempt highly compensated employees	\$134,004
• Number of positions/employees currently exempt but make less than current salary threshold	2,380
• Annual salary difference between current salary and new salary threshold	\$1 to \$4,313
• Cost of pay increases made solely to maintain exempt status for impacted employees	\$4.8 Million

# FLSA – Implementation Recommendations

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## Options

1. Reduce or **eliminate overtime**
  2. **Pay time and a half** for overtime work
  3. Provide **overtime leave**
  4. **Increase salary** to the new threshold
  5. **Combination** of options
- One size does not fit all
  - Combination of approaches may maximize cost avoidance and minimize impact on critical services

# FLSA Benefits & Challenges

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## Option 1 – Limit employees to 40 hours a week

### Benefits

- Least costly option

### Challenges

- May not be possible for all affected employees or in all cases
- May result in some services being reduced or eliminated
- May require hiring wage employees to assist with workload

# FLSA - Benefits & Challenges

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## Option 2 – Pay time and a half for overtime work

### Benefits

- Does not require raising salaries
- May be the simplest for employees who rarely work overtime

### Challenges

- Increases payroll cost for newly nonexempt employees who work overtime
- May create situations where employees with substantially the same duties and responsibilities are classified differently based solely on their salary
- May create morale issues when some otherwise similarly situated employees receive overtime pay while others do not

# FLSA - Benefits & Challenges

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## Option 3 – Provide overtime leave

### Benefits

- Defers or eliminates overtime payroll costs
- Does not require salary increases

### Challenges

- Requires agreement or policy providing overtime leave that has been communicated to employees before they work overtime hours
- Requires tracking overtime leave balances indefinitely
- Incurs the future cost of payment if the employee separates or transfers from the agency
- May result in significant time away from work if employees use their overtime leave of up to 240 hours

# FLSA - Benefits & Challenges

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## Option 4 – Increase salary to the new salary threshold to maintain exempt status

### Benefits

- Maintains employee's overtime exempt status
- May be cost effective for those employees who often work overtime hours and whose salaries are in close proximity to the new salary threshold for exemption

### Challenges

- Employee's salary must be within 10% of the new salary level prior to the increase
- In some cases, increases cannot be supported based on salary alignment within organizational units or occupations
- Exceptional processing will be required where increases for employees exceed 10% during the current fiscal year due to previously granted increases
- There is a long term budget impact
- Costs may be higher than overtime payments if employees work limited overtime hours
- May create morale issues for employees whose pay is not increased because their salary already meet the new salary threshold

# FLSA - Overtime Rule Communication

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- DHRM requested each agency to identify potential overtime liability
- DHRM partnered with the Office of the Attorney General to train HR officers
- FLSA was a topic at the HR Summit held last fall
- DHRM HR Consultants are available to answer questions
- Link to DOL Fact Sheet:  
<https://www.dol.gov/whd/overtime/final2016/>