

U.S. DEPARTMENT OF LABOR'S OVERTIME FINAL RULE: HOW DOES IT AFFECT PUBLIC LIBRARIES AS EMPLOYERS?

Marti A. Minor, J.D., M.L.I.S.
September 2016



DISCLAIMER

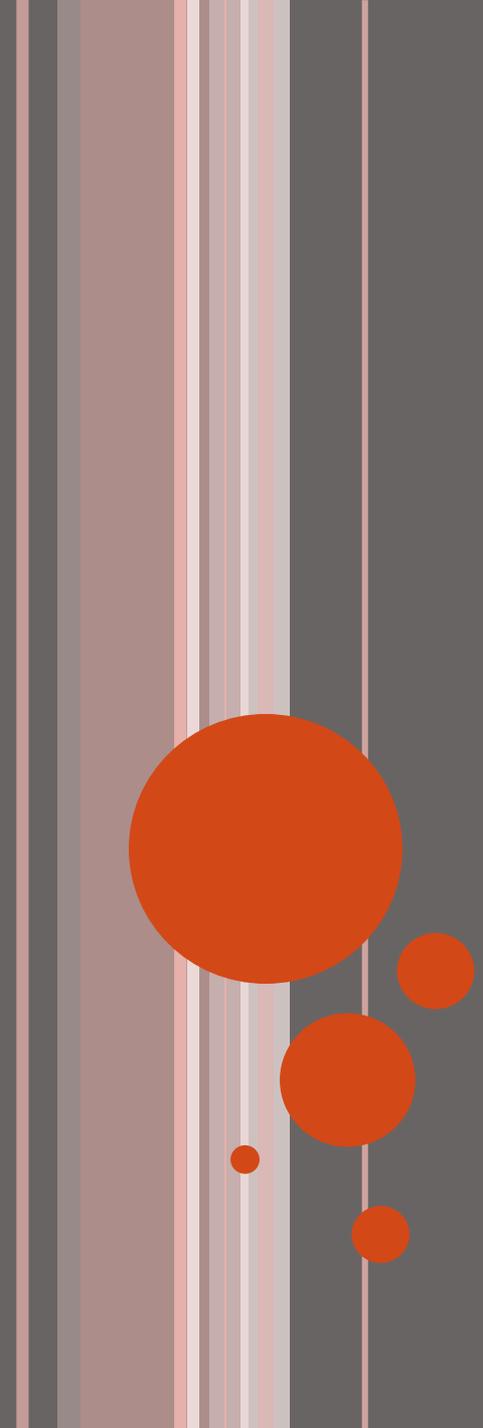
- These materials are provided as general information only.
- No legal advice is being given by the Georgia Public Library Service, the Board of Regents of the University System of Georgia, or any other person.
- You should consult with your attorney on all legal matters.



BACKGROUND

- May 2016: DOL announced significant revisions to federal OT regulations, becomes effective December 1, 2016.
- Purpose of the updates is to increase the number of employees who will be legally entitled to OT compensation.
- **DOL changed the salary level component of the white collar exemptions; salary basis and duties tests are unchanged.**
- In order to comply, an employer must revisit all white collar employees classified as exempt and apply the new salary level test.
- State and local government employers may still reward OT work with comp time.
- There is legislation introduced by both Democrats and Republicans to make changes; little likelihood of any change prior to effective date.





WHEN MUST AN EMPLOYER REWARD OVERTIME WORK?

A review of the Fair Labor Standards Act and the
White Collar Exemptions

WHAT IS THE FLSA

29 U.S.C. § 201, *ET. SEQ.*

- Federal law requiring employers to pay
 - Minimum wage of \$7.25, and
 - Overtime rate of at least 1.5 times for hours worked over 40 in a single workweek.
- Originally enacted in 1938 as part of FDR's New Deal.



WHICH EMPLOYEES ARE EXEMPT FROM FLSA REQUIREMENTS? 29 U.S.C. § 213

“White Collar” workers paid on a salary basis at a certain level whose duties are:

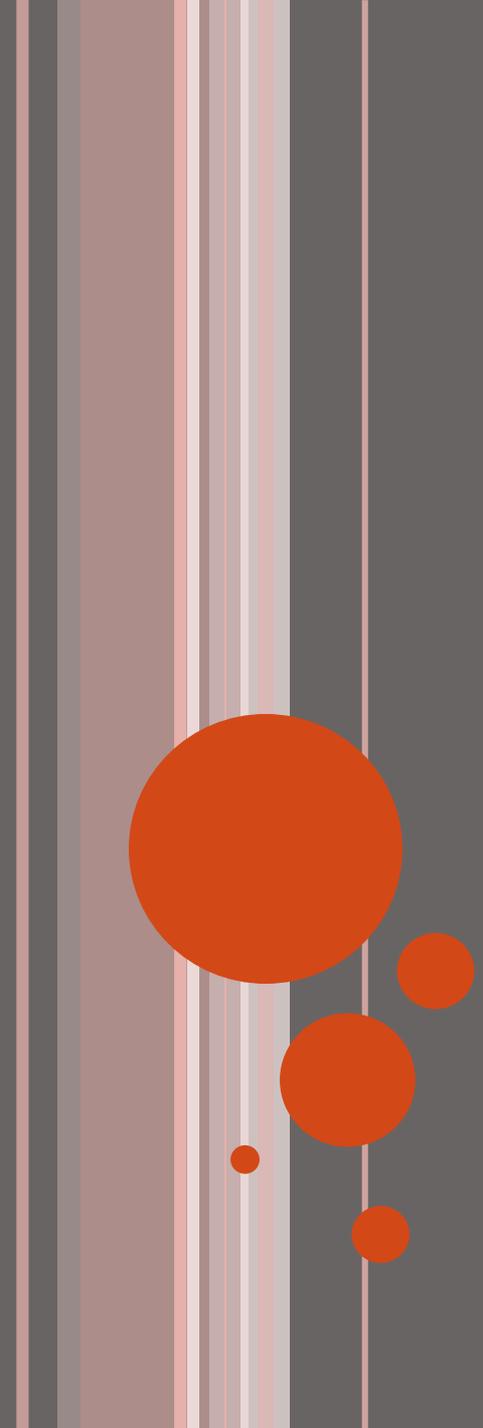
- Executive
- Administrative
- Professional
 - Learned
 - Creative



**Also exempt:

- ❖ Computer employees earning \$27.63/hr
- ❖ Outside sales employees
- ❖ Highly compensated employees earning \$100k (\$134k after 12/1/16)





WHAT REMAINS THE SAME?

Salary Basis and Duties Tests

SALARY BASIS:

29 C.F.R. § 541.602

- In order to be exempt from OT requirements, an employee must be paid on a salary, not hourly
 - Computer professional making \$27.63+ per hour is the only exception
- If an employee's pay is docked for a partial day absence, the employee is not salaried.
 - Requiring employee to use accrued leave (annual, sick, comp) does not convert the employee to hourly.



JOB DUTIES

Executive

29 C.F.R. § 541.100

- ❑ Management duties,
- ❑ Direct work of 2 or more FT employees, and
- ❑ Power to hire/fire or recommend hire/fire

Administrative

29 C.F.R. § 541.200

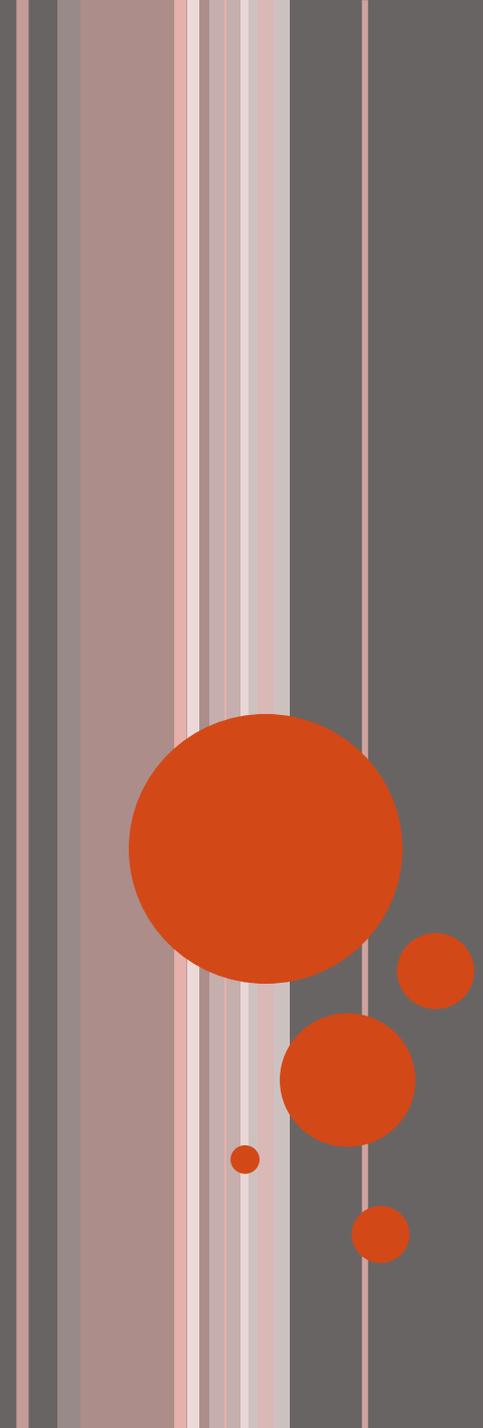
- ❑ Office or non-manual work related to management, and
- ❑ Primary duties require exercise of discretion and independent judgment regarding matters of significance.



PROFESSIONAL

- Learned professional
 - advanced knowledge required for primary duties,
 - in a field of science or learning, and
 - acquired through prolonged course of specialized instruction.
- Creative professional
- Teacher: exempt regardless of salary level if primary duty is teaching, tutoring, instructing, or lecturing.





WHAT HAS CHANGED?

Salary Level Increase

THE NUMBERS

2004-Present

- \$455 per week or \$23,660 per year

Dec. 1, 2016- Dec. 31, 2019

- \$913 per week or \$47,476 per year.



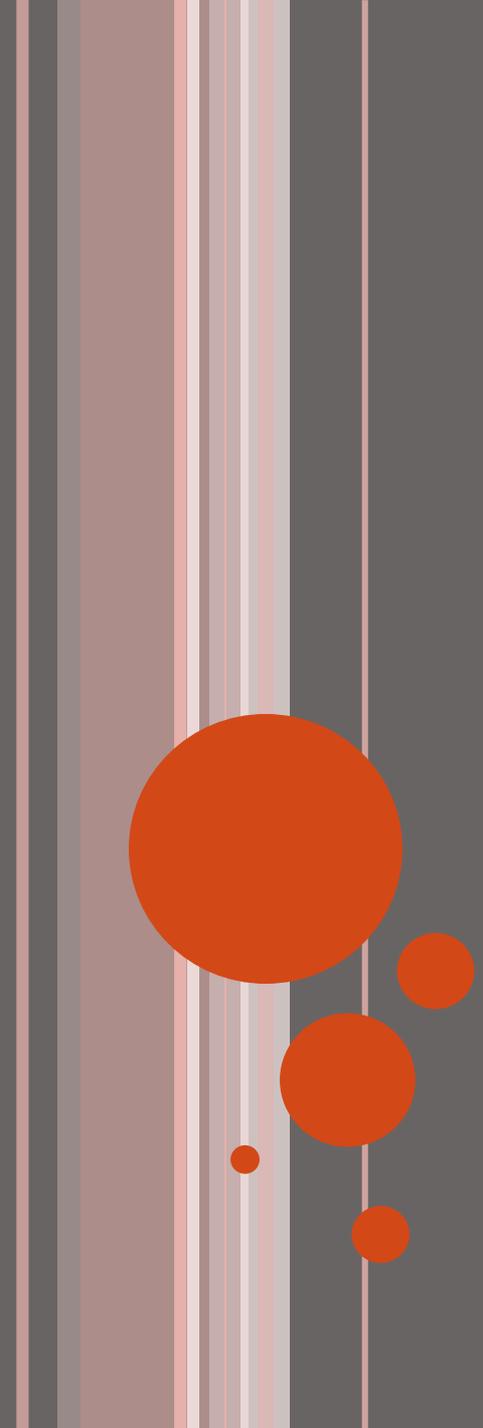
AUTOMATIC INCREASES

- Every three years the DOL will increase the salary threshold.



- Keep salary requirement in line with inflation.
- Avoid such dramatic increase in the future.
- Allow employers to plan.



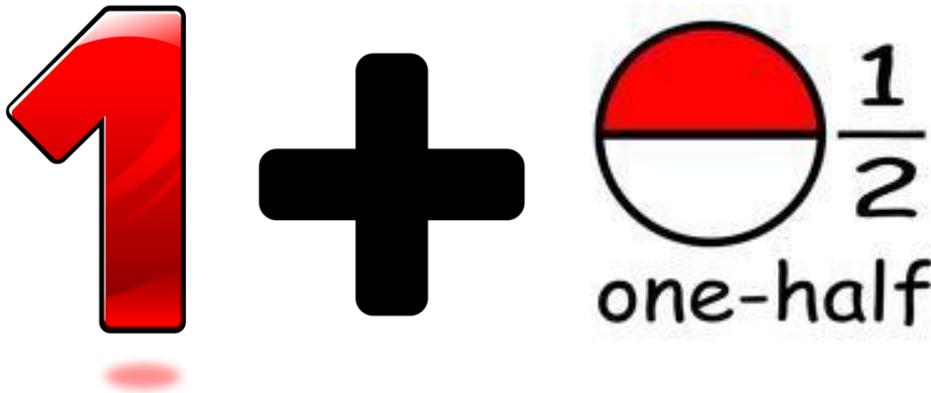


STATE & LOCAL GOVERNMENT EMPLOYERS

Rewarding Overtime Work with Compensatory
Time Off

COMP TIME RATE

- For every hour over 40 a public employee works, the employer must award 1.5 hours of comp time.
- Hour for hour comp time is not allowed for OT.



AGREEMENT

- Agreement **BEFORE** overtime is worked.
- Memorandum or written policy provided to employees is sufficient.



MAXIMUM ACCRUED COMP TIME

- Cap of 240 hours of accrued comp time.
(160 hours of overtime).
- Once cap is met, accrued comp time must be reduced through use or cash out before additional comp time can accrue.



RECORD KEEPING: GENERAL WAGE & HOUR

- Make, keep, and preserve records of employees' hours, wages, and other conditions of employment. *See 29 CFR Pt. 516*
 - can be kept in any form
 - available for inspection w/in 72 hours
 - time clock not required
 - 2-year retention
 - even employee records for exempt employees must be kept



RECORD KEEPING: COMP TIME

- Number of hours of comp time earned per workweek;
- Number of hours of comp time used per workweek;
- Number of hours of comp time compensated in cash, total paid, and date of payment, and
- Written understanding or agreement with respect to earning and using comp time.



COMP TIME USE: EMPLOYEE REQUESTS

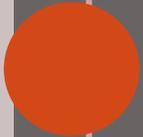
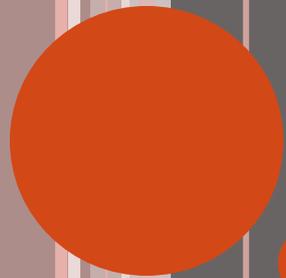
- Must grant requests to use within a “reasonable time” after the request is made.
- An employee must be permitted to use comp time on the date requested unless doing so would “unduly disrupt” the operations of the agency.



COMP TIME USE: OPTIONS OF EMPLOYER

- Employer can compel use at any time.
 - *Christensen v. Harris County, Tx.*, 2000 WL 504578 (United States Supreme Court).
- Employer can cash out at any time
 - Cash out rate = higher of last rate of pay or average of regular rate of pay over past 3 years.





FREQUENTLY ASKED QUESTIONS

TRAVEL TIME



- Home/work commute: not compensable time
- Home/work commute on special assignment to another location: travel time to the special location minus regular commute time IS compensable time.
- All in day's work: when regular duties require employee to travel from site to site, travel time IS compensable time.
- Overnight travel: IS compensable time, but not when employee is merely a passenger and the travel occurs outside regular working hours. (See Fact Sheet 22).



TRAINING TIME

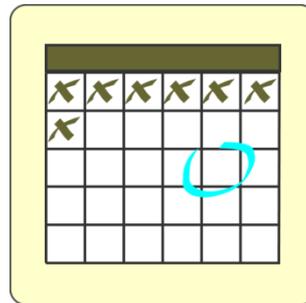
Time spent attending lectures, meetings, and training programs: IS compensable time unless

- Outside normal working hours;
- Voluntary;
- Not job related, and
- No other work is concurrently performed.



WORK WEEK V. PAY PERIOD

- An FLSA workweek is a fixed, regularly-recurring period of 168 hours – that is, seven, consecutive, 24-hour periods – that the employer expressly adopts in order to maintain FLSA compliance.
- Employer may pay employees at any interval.



UNTIL NEXT TIME . . .

Send questions and program ideas to GPLS.

