



*A Union of Professionals*

## Impact of U.S. Labor Department Overtime Rules: Healthcare Workers

### Background

New rules issued by the U.S. Department of Labor make it easier for employers to deny the right to overtime compensation to millions of workers. These rules, scheduled to take effect in August, change the longstanding tests to determine if a worker is an exempt executive, administrative manager or professional, and therefore, ineligible for overtime. The existing test to determine if a worker fits these criteria is two-pronged: does the employee have the educational background and job duties indicative of an executive, manager or professional; and is she or he paid on a salary basis. Both prongs must be satisfied in order for an employee to be denied overtime compensation.

The new rule changes both prongs of this test. First, the educational and duties criteria were changed. For example, work experience such as on-the-job training may now be substituted for a professional degree. Second, the definition of “salary” was changed to include workers paid on an hourly basis if those workers are also guaranteed certain earnings during that work period. This amount must be more than \$455.

For example, a registered nurse who earns \$25 per hour and normally works 50 hours per week could lose overtime pay if she is guaranteed \$475 for doing any work that week. Under existing rules she would earn \$1,375 for the week (\$1,000 for the first 40 hours of work and \$375 for the 10 hours of overtime). Instead of earning \$375 in overtime pay (1.5 overtime premium x 10 hours of extra work x \$25/hour=\$375), she will only earn \$250 (10 hours of extra work x \$25/hour=\$250), resulting in a loss of \$125 per week.

### How does this affect me?

**Registered nurses (RNs) may lose overtime under this rule.** Under both the existing and new rules, RNs satisfy the duty standards to qualify as professionals, exempt from federal overtime rules. However, under the existing rules, most RNs, who are paid on an hourly basis--and therefore do not satisfy the salary test--are entitled to overtime pay. Now that “hourly” employees may satisfy the “salary” test, most of the 2 million RNs working in this country may be denied overtime pay.

**Licensed Practical Nurses (LPNs) will not lose overtime under this rule.** The new rule explicitly says that LPNs do not meet the duties test; therefore, even LPNs who are paid on a salary basis must continue to receive overtime pay. Although the rule does not specifically mention other healthcare professionals, such as **certified nursing assistants**, workers with similar job duties and education should continue to receive overtime pay.

**Dental Hygienists (DHs) and Certified Medical Technologists (CMTs) may lose overtime under this rule.** Under both the existing and new rules, DHs and CMTs satisfy the duty standards to qualify as professionals, exempt from overtime rules. CMTs are mentioned in both rules and DHs, although, exempt under existing rules, are explicitly identified under the new rules. Similar to RNs, however, these employees are often paid on an hourly basis, and do not satisfy the salary test. Now that “hourly” employees may satisfy the “salary” test, many of DHs and CMTs may be denied overtime pay.

## **What else do I need to know about the new overtime rules?**

**Compensatory time.** Compensatory time is a form of paying employees with time off instead of money. While this practice is allowed for public sector employees, many government employers pay monetary compensation anyway. This new rule allows private sector employers, such as hospitals, health maintenance organizations and nursing homes, to pay workers for overtime in compensatory time instead of monetary compensation. The RN who works 50 hours, for example, would not only lose the higher overtime pay, he or she might only be given time off for the extra hours worked--at a time of the employer's choosing. In reality, understaffed healthcare employers are unlikely to make it easy for workers to use this time. As a result, many of these workers will lose both money and time.

**Upper salary threshold.** The new overtime rule takes overtime pay away from almost every worker earning more than \$100,000 per year. Although this category of employees is relatively small, this provision sets a dangerous precedent and is contrary to the purpose of the Fair Labor Standards Act (FLSA)--to encourage employers to hire more workers and respect the individual's time away from work. If the Labor Department follows past practice and does not update this threshold for 30 years, overtime pay will be available only to workers earning less than today's equivalent of \$26,500 (assuming the same rate of inflation occurs over the next 30 years, as the past 30 years).

**Union contract protections.** Many union contracts define overtime eligibility by referencing the FLSA. If the FLSA changes, as with these regulations, so do the terms of these contracts. Other union contracts explicitly state the terms of overtime eligibility and those workers will continue to be protected until the expiration of that contract. However, when the next contract is negotiated, the union will be forced to bargain to maintain these rights.

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