

# ASK RUSS

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What do you need to know about the new U.S. Department of Labor rule regarding overtime pay?

On Wednesday, May 20 the United States Congress passed a new U.S. Department of Labor rule regarding overtime pay. The new rule is intended to boost low and middle-income wages. According to the Labor Department, the new rule is expected to make approximately 4.2 million salaried workers eligible for overtime pay. This is about 7% of the salaried workers in the U.S.

According to USA Today, Effective Dec. 1, the new rule raises the salary threshold at which white-collar workers are exempt from overtime pay from \$23,660 to \$47,476.

A manager who was making \$30,000 a year, who under the current law would be exempt from mandated overtime, now will not be exempt.

As with any governmental regulation there are no shortage of twists and turns and I do not have time in this space to address all of them so let's start with the things that have a chance to affect our industry.

What are the qualifications for employees to be exempt from receiving overtime pay?

According to the U.S. Wage and Hour Division, there are separate exemptions for employees providing executive, administrative, some computer skills and other services. The criteria for an employee to be exempt from receiving overtime pay are:

Executive Exemption – To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week; this is now \$913 per week under the new rule.
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent.
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemptions – To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week; now \$913 per week.
- The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

I can imagine that when you take a close look at your staff positions and responsibilities that you may find that some of the staff members might qualify for overtime under the new rules.

This is where human resources is your friend. It is important, regardless of the size of your operation, that a careful analysis of your staff, their responsibilities and hours be undertaken. After careful analysis it may well be in your best interests to pay the higher salary rate in order to maintain the staff members exempt status.

It may also make sense after that analysis to consider adding an additional part time position or separating responsibilities in a way that does not cause you undue economic harm.

In the analysis of this new rule and its effect on your operation it may be necessary to convert salaried workers to hourly employees as a method to more accurately track employee hours.

We all have employees that want to “do the right thing for the company” with a wink and a nod. Don’t do it. There is no shortage of ways that adopting a “work around” on this issue could get you in trouble.

It is the employer’s responsibility to administer this program and more importantly to keep track of an employee’s hours and pay them overtime when they work more than 40 hours.

#### The Bottom Line

If you have not done so already, you should immediately conduct a study to determine if and where this new rule will affect your operation and move to make the appropriate decision for your facility and operation.

*Russ Simons is...*

*managing partner, Venue Solutions Group, and has been in this industry for more than three decades, working in arenas, stadiums, design, construction, safety and security. Send questions about any aspect of venue operation to [askruss@venuestoday.com](mailto:askruss@venuestoday.com) or mail questions to Venues Today, P.O. Box 2540, Huntington Beach, CA 92647.*