

May 23, 2016

TO: Deans of U.S. Dental Schools
Directors of Advanced Dental Education Programs
Directors of Allied Dental Education Programs
ADEA Board of Directors
ADEA Legislative Advisory Committee

FROM: Richard W. Valachovic, D.M.D., M.P.H., ADEA President and CEO
Yvonne Knight, J.D., ADEA Chief Advocacy Officer

RE: Department of Labor's Final Rule on Overtime Pay as it Pertains
to Higher Education

On May 17, the Department of Labor (DOL) issued its [Final Rule](#) ("rule") on defining and delimiting the exemptions for executive and administrative personnel under the Fair Labor Standards Act (FLSA). This memorandum will provide background and a summary of certain aspects of the rule as it pertains to higher education.

Background.

The FLSA of 1938 established the standard for workers to be paid time-and-a-half for any hours worked over 40 hours per week. Under the FLSA, all hourly employees are guaranteed overtime, and salaried employees are presumed to have the same guarantee unless they (1) make more than a salary threshold set by the DOL, and (2) pass a test demonstrating that they primarily perform executive, administrative or professional duties. A discreet and limited number of occupations are not eligible for overtime pay; they include teachers, doctors and lawyers. The overtime rules have not been comprehensively updated since the 1970s, therefore, in March 2014 President Obama penned a memorandum directing the DOL to modernize the nation's overtime rules. The rule released on May 17 is the culmination of the President's directive to update the overtime rules. We have provided a link to the White House's [Fact Sheet](#) on the new rule.

Provisions of the Final Rule:

The FLSA requires employees be paid at least the federal minimum wage for all hours worked and overtime pay at a rate at least one and one-half times their regular rate of pay for any hours they work beyond 40 hours in a workweek. On the other hand, the FLSA exempts from minimum wage and overtime requirements employees who are bona fide executive, administrative or professional employees.¹ However, because of special regulations that apply to certain personnel

¹ See 29 U.S.C. 213(a)(1); 29 CFR Part 541.

at higher education institutions, many white collar employees are not subject to the rule. In fact, existing (and unchanged) regulatory provisions specific to higher education mean that the rule may have limited impact on teachers and academic administrators.

- *Bona fide teachers*² are not subject to the salary level requirement. Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing. Teachers include professors, adjunct instructors and teachers of skilled and semi-skilled trades and occupations.
- *Graduate and undergraduate students* are not considered to be in an employed relationship with the school or with a grantor, therefore the DOL does not assert that these workers are entitled to overtime.
- *Academic administrative personnel*, such as department heads, academic counselors and advisors, etc., are not entitled to overtime compensation if they are paid at least as much as the entrance salary for teachers at their institutions.
- *Hourly workers* are not impacted by the new rule. This is the case because generally, hourly workers are entitled to overtime regardless of how much they make if they work more than 40 hours, therefore nothing changes.
- *Postdoctoral researchers in the sciences* who do only research and do not teach are subject to the salary threshold for exemption from overtime; the new rule applies.
- *Non-academic administrative employees*, in instances where the higher education institution employs workers whose duties are not unique to the education setting (e.g., managers in food service or bookstore) will be covered by the new rule.
- *Highly compensated workers*, who fail the standard duties test and earn more than \$134,004 in a year, are almost all ineligible for overtime compensation.

Given the complexity and diversity of higher education institutions, the DOL has written guidance especially for higher education administration titled, [Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act](#). Additionally, please consult the DOL's [Overtime Final Rule and Higher Education](#) publication for further clarification.

Next Steps:

Effective Dec. 1, 2016, unless Congress intervenes, the rule will raise the salary level from its previous amount of \$455 per week (the equivalent of \$23,660 a year) to \$913 per week (the equivalent of \$47,476 per year) in 2016. In other words, anyone who is paid less than \$47,476 per year will be entitled to overtime pay. Also, the rule will raise the compensation level for highly

² See 29 CFR 541.303(d),.600(e).

compensated employees, subject to a more minimal duties test from its previous amount of \$100,000 to \$134,004 annually.

The rule establishes a mechanism for automatically updating the salary level and compensation level for highly compensated employees every three years, with the first update to take place in 2020. Salaried white collared employees paid below the updated salary level are generally entitled to overtime pay. Lastly, the rule does not include any changes to the duties, which determines who is exempt from overtime.

As always, please check with counsel for applicability of the provisions of the new rule as they may apply to your institution.

If we can be of further assistance in this regard, please feel free to contact Yvonne Knight, J.D., ADEA Chief Advocacy Officer at KnightY@adea.org.