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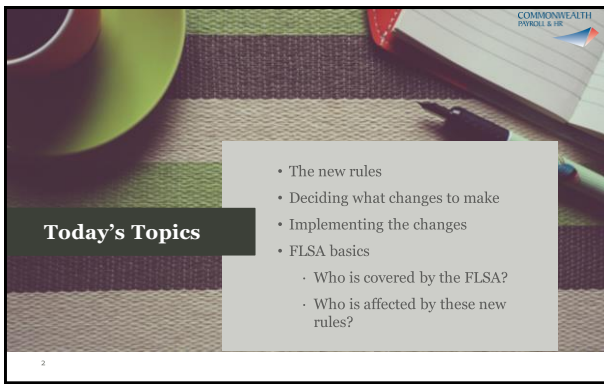
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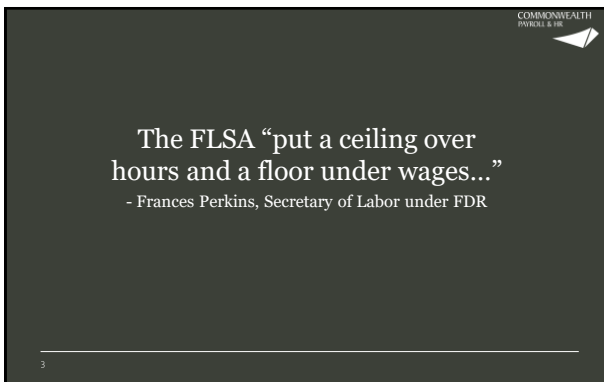
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**ex·empt**

*(adj.)* Not subject to certain federal workplace laws or protections, especially those requiring overtime compensation: *exempt employees.*

**non·ex·empt**

*(adj.)* Subject to certain federal workplace laws or protections, especially those requiring overtime compensation: *policies for non-exempt employees who are paid by the hour.*

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**Changes Effective December 1, 2016**

- Executive, Administrative, Professional and Computer Employees salary level = **\$455/week → \$913/week (\$47,476/year)**
- Highly Compensated Employee salary level = **\$100,000 → \$134,004/year**
- Automatically increases every three years
- Some allowance for inclusion of incentive pay

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**What about state law?**

- Most employee-friendly law wins
- Possible differences:
  - No Highly Compensated Employee exemption
  - Teachers, doctors, lawyers have to make a minimum salary
  - Higher minimum salary level

**California:** In 2019 (for 26+ employees) state minimum salary for exempt employees will be higher than federal

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What Now?

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**To-Do List**

1. List all employees and include columns for FLSA status (exempt or non-exempt) and weekly or annual income.
2. Highlight anyone who is exempt but makes less than \$913/week or \$47,476/year
3. Conduct time tracking exercise
4. Review exempt employee duties to make sure they are properly classified

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**Consider Your Options**

1. Raise salary to maintain exemption
2. Re-classify as hourly non-exempt
3. Re-classify as salaried non-exempt

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### Compensation Calculations

- **Standard equation:** based on 40 hour work week  
$$\text{Weekly salary} / 40 = \text{new hourly rate}$$
- **Cost-neutral equation:** method of calculating an hourly rate that will keep overall pay the same, even with overtime hours:  
$$(\text{weekly salary}/40) + (1.5 \times \text{weekly overtime hours}) = \text{new hourly rate}$$

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### Compensation Considerations

1. **Fair hourly rates:** will cost-neutral math lead to strange pay discrepancies?  

*Example:*  
Manager, salary of \$41,600, works 50 hours per week  
Subordinate, paid \$15 per hour  
Manager's new rate of pay after cost-neutral math:  
\$14.55 per hour

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### Compensation Considerations

2. **Fair classifications:** employees in the same position should be classified the same unless there is a compelling business reason to do otherwise
3. **Wage compression:** if you give a junior employee a raise to meet the threshold, should the senior employees receive a raise as well?

12

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### A Note About Salaried Non-Exempt Status

- Not a silver bullet
- Still need to track hours
- Still need to pay overtime
- Can make sense administratively when:
  - Small number of non-exempt employees;
  - High level of trust in employees;
  - Hours worked rarely fluctuate; and
  - Little overtime is worked

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## Implementing the Changes

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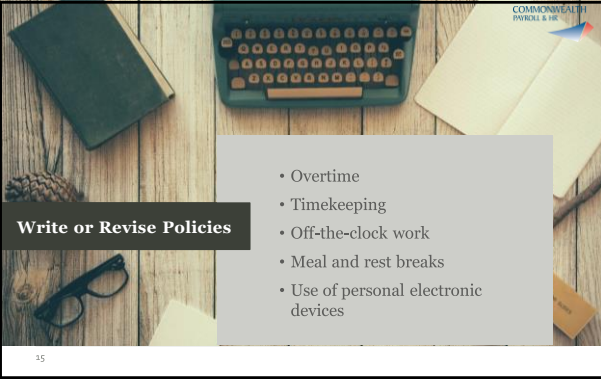
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Write or Revise Policies

- Overtime
- Timekeeping
- Off-the-clock work
- Meal and rest breaks
- Use of personal electronic devices



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### Communicate and Train

- Talk early, talk often – no surprises!
- If you are going to track time for awhile, start sooner than later
- Alleviate potential morale issues by explaining why these changes are happening
- Distribute and discuss policies that soon-to-be non-exempt employees will need to follow
- Train supervisors and managers
- Issue formal classification change letters well in advance of your chosen effective date

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## Making Sure You Are Classifying Employees Correctly

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### Two Step Process

1. Does FLSA apply to my organization or employees?
2. Which employees can be exempt?

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### Who is covered by the FLSA?

- **Enterprise coverage:** Any business that does \$500,000 in business or sales annually, and those in certain industries, regardless of sales
- **Individual coverage:** Any employee engaged in interstate commerce, which has a very broad definition

19

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### Various Exemption Categories

Exemption Category	Relative Size
White Collar Employees	Largest
Some Sales Employees	Medium
Misc.	Small
Wreath Makers	Small
Casual Babysitters	Small
Farm Workers	Small
Fishermen	Small

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### White Collar Exemption

- Non manual or office work
- Exact hours less important
- Independent judgement and discretion

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# White Collar Exemptions

Duties

Salary Level

Salary Basis

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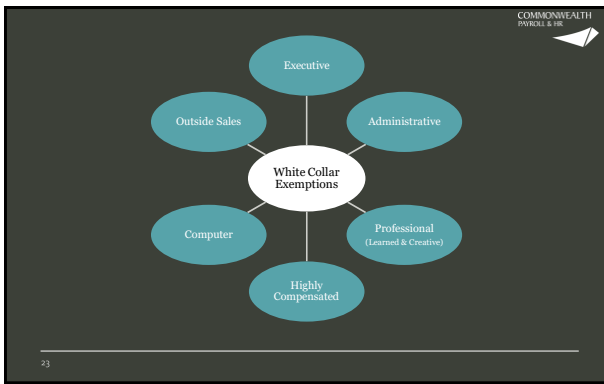
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## Executive

1. Primary duty is the **management** of the organization, or a division or department within it,
2. Directs the work of **two or more** full-time employees (or equivalent)
3. Has the power to **hire or fire** other employees, or their recommendations are given particular weight

**OR**

Someone who owns at least a bona fide **20% equity interest** in the company and who is actively engaged in its management

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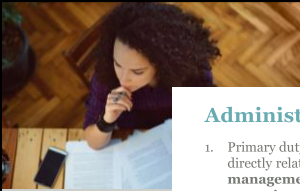
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### Administrative

1. Primary duty is office or non-manual work directly related to the implementation of **management policies or general business operations** of the company or its customers
2. Customarily and regularly exercises **discretion and independent judgment** with respect to matters of significance

*Using the word "administrative" in a job title doesn't make it exempt. In fact, it probably means it doesn't fit.*

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### Professional

- **Learned professional:** uses advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, e.g. doctor, lawyer, engineer, scientist
- **Creative professional:** performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor

*Note: Salary level and salary basis tests do not apply to teachers, doctors, and lawyers*

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### Highly Compensated Employees

1. Primary duty includes performing **office or non-manual work**
2. Customarily and regularly performs **at least one of the exempt duties or responsibilities** of an exempt executive, administrative, or professional employee

*Note: Must make at least \$134,004 beginning December 1, 2016*

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### Computer Employees

Employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field.

*Note: if employee is paid at least \$27.63 on an hourly basis, the salary level and salary basis tests do not apply*

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### Outside Sales

1. Primary duty must be **making sales or obtaining orders** or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer
2. The employee is **customarily and regularly engaged away** from the employer's place of business – home offices and satellite offices are considered the employer's place of business

*Note: Salary level and salary basis tests do not apply*

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### A Note About Sales Employees

Sales employees are generally:

- Exempt Inside Sales
- Exempt Outside Sales
- Exempt Administrative
- Exempt Executive
- Exempt Highly Compensated Employee
- Non-exempt

→ **Only those with the administrative, executive, and highly compensated employee exemptions will be affected**

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### Commissions, Non-Discretionary Bonuses, and Incentive Pay

- Up to 10% of minimum salary (base pay must be \$42,728.40 or more)
- Must be paid out at least quarterly – quarterly income must be at least \$11,869
- If not enough is earned to keep the exemption:
  - Make catch-up payment within one pay period
  - Reclassify the employee as non-exempt and pay overtime retroactively
- Effective December 1, 2016

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### Take Aways

- You are not alone!
- Employees are concerned too
- You are not being required to pay anyone \$47,476 a year
- This doesn't have to break your budget

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### Questions & Answers

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**Kara Govro**

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Thank you!

*JD, SPHR | HR Pro*

Kara practiced employment and bankruptcy law for five years before joining us, and was a Human Resources Generalist at an architecture and engineering firm for two years prior to that. As an attorney she worked on many wage and hour and discrimination claims in both state and federal court. She holds a Bachelor of Arts degree in Liberal Studies from Oregon State University and earned her law degree from Lewis and Clark Law School.

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