

# m i c h i g a n RESTAURANT NEWS

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## Overtime Rule Announced

**O**n May 18, 2016, the U.S. Department of Labor formally announced the much anticipated Overtime Rule. Met with strong opposition, the new ruling which **takes effect December 1, 2016**, is expected to make an additional 4.2 million salaried workers across the nation eligible for overtime pay, including 101,463 within Michigan.

The Overtime Rule, which many believe is the most outrageous mandate of the current Administration, seeks to do the following:

- Increase the salary under which overtime must be paid to \$47,476 a year, or \$913 a week (the new exemption threshold): up from current levels of \$23,660 and \$455 a week.
- Mandates that the exemption threshold salary be updated every three years (the first year being January 1, 2020) and be tied to the 40th percentile of full-time salaried workers in the lowest-income Census region (currently the South).
- Makes no changes to the duties tests used to determine whether a salaried employee below the required level of salary is considered an executive, administrative, or professional employee and thus exempt from overtime pay.
- Allows certain bonuses and incentive payments to count toward up to 10 percent of the new salary level.

Since the new rules were published, the MRA has gotten a number of inquiries about the potential impact on our industry. Here are a few things to consider as the effective date approaches.

### • Calculate employee hours:

It is important for each business to determine exactly how many hours per week each employee works so that they can ensure compliance. For example, consider an employee who was previously an exempt employee working 40 hours per week and making \$26,000 annually. That salary could be converted into an hourly rate equal to their pay, or \$12.50 per hour.

### • Consider changes to salaries:

Many entities have begun to consider a different strategy for employees who make less than the updated salary exemption threshold, who were previously exempt from overtime and who typically work more than 40 hours per week. For those particular employees, employers could raise base salaries to at least the exemption threshold.

### • Classify employees by salary:

Any employee making over the new exemption threshold amount (\$47,476 or \$913 a week), may be exempt from overtime if they are paid on a salary basis and their job duties primarily involve executive, administrative, or professional duties as defined under the regulations. Human resources and payroll professionals should make a list of employees whose salaries do not exceed the new exemption threshold because they may be entitled to receive overtime pay once the changes are enacted.

While Congress takes steps to block the DOL Overtime Rule under provisions within the Congressional Review Act, we expect its efforts to return limited success. It is important for all restaurateurs to begin planning accordingly with the expectation that the new ruling will take effect on December 1, 2016.

Because these rules are complex and present serious consequences for noncompliance, do not hesitate to reach out to the Michigan Restaurant Association as a resource or use the following link for additional information.

<https://www.dol.gov/whd/overtime/final2016/>

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