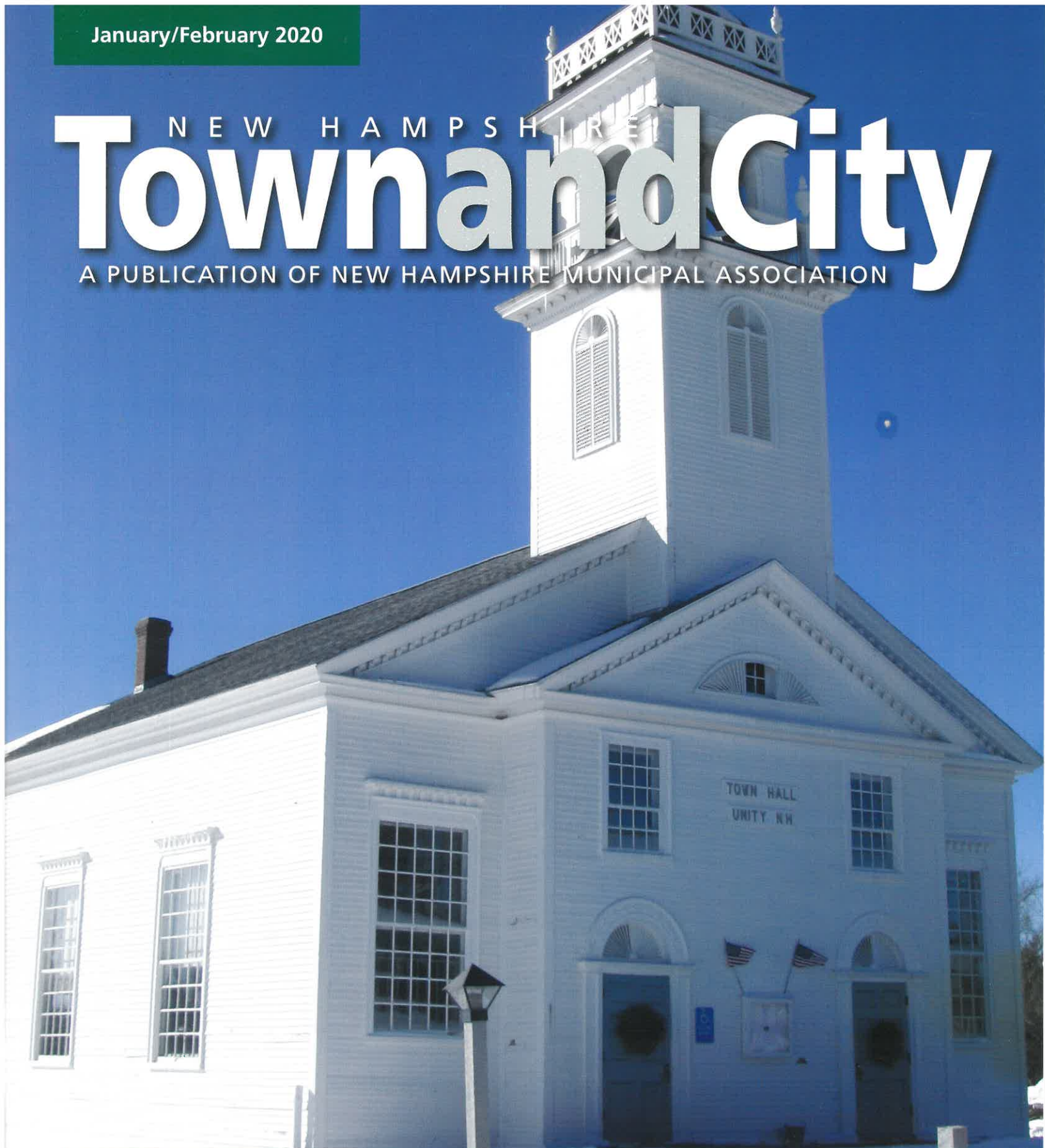


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# NEW HAMPSHIRE Town and City

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## U.S. Department of Labor Announces New Overtime Rules Effective January 1, 2020

By Mark T. Broth

As the end of the year approaches, we have reviewed the 2019 Employment Law Hotline calls to determine if there are any issues that arise more frequently than others. Over the last several years, the majority of calls concerned the federal wage and hour law. 2019 proved to be no different. Although the law has been around for over 80 years, towns and cities continue to have difficulty meeting all of the law's intricacies.

This is not surprising, as public employers face compliance challenges not faced by most private sector employers. Unlike the private sector, the majority of New Hampshire's public sector employees are unionized. Through collective bargaining, public employees have obtained compensation and benefits that differ significantly from what is typical in a private sector workplace. Longevity pay, shift differentials, paid details, and education and certification premiums are much more common in public sector collective bargaining agreements than in private sector compensation systems. As a result, public employers face greater challenges in correctly determining an employee's "regular rate" for purposes of calculating overtime. Unique to the public sector is the ability to provide non-exempt employees with "compensatory time off" in lieu of overtime pay. The Fair Labor Standards Act includes a complex regulatory scheme explaining how compensatory time arrangement can be established, how "comp time" is tracked, when it can be used and how it is paid out upon separation from employment. Also unique to the public sector are rules exempting small police and fire departments (five or fewer employees) from the general overtime requirement, different overtime thresholds for police, fire and emergency services personnel, and the ability to determine overtime liability for police and fire personnel over periods of up to 28 days, rather than the seven day period applicable to all private sector employees.

On September 24, 2019 the U.S. Department of Labor announced a final rule applicable to both public and private sector employers relating to the "white-collar" exemptions under the Fair Labor Standards Act. As you may recall, the Department of Labor announced a similar rule change in 2016, though, due to legal challenges, that change never took effect. This new rule, which raises the requirements that an employee must meet in order to be exempt from

minimum wage and overtime requirements (though not by as much as the proposed 2016 rule) will go into effect on January 1, 2020.

Under this rule:

- An employee must earn at least \$684 per week (or \$35,568 per year) in order to qualify for the executive, administrative, professional, or computer employee exemption;
- The "highly compensated employee" exemption threshold has been raised to \$107,432 (from the previous threshold of \$100,000); and
- Employers may use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level.

This rule does not affect the existing duties test used to evaluate whether an employee qualifies as a *bona fide* exempt executive, administrative, professional, or computer employee. We recommend that employers take this opportunity to review their payrolls and ensure that they are in compliance with regulations governing overtime exemptions.

It seems highly unlikely that the FLSA will be simplified or replaced anytime soon and we anticipate that it will continue to be a challenge for employers. The Employment Law Hotline is here to help. We welcome your calls and emails and look forward to answering your questions in 2020. Happy New Year!

*Mark Broth is a member of Drummond Woodsum's Labor and Employment Group. His practice focuses on the representation of private and public employers in all aspects of the employer-employee relationship. This is not a legal document nor is it intended to serve as legal advice or a legal opinion. Drummond Woodsum & MacMahon, P.A. makes no representations that this is a complete or final description or procedure that would ensure legal compliance and does not intend that the reader should rely on it as such. Copyright 2020 Drummond Woodsum. These materials may not be reproduced without prior written permission.*