

# Overtime Pay: Common Exemptions

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In my last article, I attempted to answer some frequently asked questions about the overtime pay requirements created by either federal or state law. This month, my intent is to summarize the most common exemptions to overtime pay. Remember, the general rule is that employees who work more than 40 hours in a given work week are entitled to be paid one and one-half times the regular rate of pay for the overtime hours. However, some employees are not entitled to overtime pay. The most common exemptions are the so-called “white collar” exemptions for executive, administrative and professional employees, computer professionals, outside sales employees, and highly compensated employees.

## **Executive Employees**

An executive employee must be paid a minimum salary of \$455 per week **and** perform all of the following exempt duties: (1) she must have the primary duty of management of the business or a recognized department or subdivision; and (2) she must customarily and regularly direct the work of at least two other employees or the equivalent (such as one full-time and two half-time employees or four half-time employees).

Management duties generally include such things as interviewing, selecting, training, evaluating, and disciplining employees; setting and adjusting rates of pay and hours of work; assigning work; handling complaints and grievances; and quality and inventory control. An executive must have the authority to hire or fire other employees, or their suggestions and

recommendations about the hiring, firing advancement, promotion, or any other change of status of other employees must be given particular weight. Employees whose duties include both supervisory and nonsupervisory functions are exempt as long as management is their primary duty. This is true even if most of their time is spent on nonexempt duties. What's important is that their primary duty includes such management activities as scheduling employees, assigning work, overseeing product quality, ordering merchandise, managing inventory, handling customer complaints, and authorizing the payment of bills.

### **Administrative Employees**

Many office workers assist executives with the company's management or general business operations but don't have sufficient authority to qualify as exempt executives themselves. However, these employees may still be exempt from the overtime pay requirements if they meet the following "administrative employee" test: (1) they must be paid a minimum salary of \$455 per week; and (2) they must have the primary duty of performing office or nonmanual work that is directly related to the management or general business operations of the employer or its customers; and (3) their primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

This exemption generates the most controversy because many employees have job duties that fall into the middle ground between clearly exempt and clearly nonexempt. The key issue is whether the employee regularly exercises discretion on important issues, and usually this must involve acting or making a decision after comparing and evaluating possible courses of conduct.

## **Professional Employees**

To be an exempt professional, an employee must be paid their minimum salary of \$455 per week and have the primary duty of performing work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

The second prong of this test has three separate requirements. First, the employee must perform work that requires advanced knowledge. This means work that is predominantly intellectual in character and that includes the consistent exercise of discretion and independent judgment. Second, the advanced knowledge must be in a field of science or learning. This includes only occupations that have a recognized professional status. It does not include occupations in the mechanical arts or skilled trades, which may require knowledge of an advanced type but are not in a field of science or learning. Third, the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. The exemption also applies to employees who have substantially the same knowledge level and perform substantially the same work as degreed employees, but who attained their knowledge through a combination of work experience and intellectual instruction.

## **Computer Professionals.**

To be exempt, computer professionals must: (1) make either the minimum salary of \$455 per week OR be paid an hourly rate of not less than \$27.63 per hour; (2) be employed as a computer systems analyst, computer

programmer, software engineer, or other similarly skilled worker in the computer field; and (3) have one of the following as their primary duty:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
- The design, development, documentation, analysis, creation, testing or modification of computer systems or programs including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation, or modification of computer programs related to machine operating systems;  
or
- A combination of the above, the performance of which requires the same level of skills.

Employees who don't meet all of these requirements may still be exempt under one of the other white-collar exemptions, such as if they have supervisory or management duties.

### **Outside Sales Employees**

This category applies to employees who make sales at a customer's place of business or home. To qualify under this exemption, an employee must: (1) have the primary duty of making sales or obtaining orders or contracts for services or the use of facilities; and (2) be customarily and regularly engaged away from the employer's place of business in performing their primary duty.

There is no minimum salary requirement for outside sales employees.

### **Highly Compensated Employees**

This is a relatively new category and it allows employers to avoid paying overtime to employees who make \$100,000 or more annually – even if they do not otherwise fall under one of the white-collar exemptions.

To be classified as exempt under this rule, employees must (1) perform office or nonmanual work; (2) customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee; (3) be paid a minimum salary of at least \$455 per week on a salary or fee basis; and be guaranteed a total annual compensation of at least \$100,000 exclusive of board, lodging, or other facilities, or payments for health or life insurance, contributions to retirement plans, or other fringe benefits.

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These exemptions may look easy, but they are not necessarily easy to apply to any given situation. As an employer, you should seek legal advice if you have any doubts about whether an employee is entitled to overtime pay. The financial consequences for making the wrong decision can be severe.