

# Employers: There are some exemptions to the overtime requirement

By ANN BOWDEN-HOLLIS  
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One of the often misunderstood rules about overtime pay requirements involves which employees can be classified as exempt from payment for overtime work, or time worked above 40 hours in a seven consecutive day work week. Employers might find helpful a brief discussion of the most common types of exemptions.



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Exemptions under the Fair Labor Standards Act fall into five general categories: executive, administrative, professional, computer employee and outside sales. A sixth for highly compensated employees is really a refinement of the first three categories. This column will discuss the first three, which are the most common.

Exemptions from the right to overtime pay are strictly construed because they limit a right employees otherwise have to pay at time and one half their regular rate of pay for all time worked above 40 hours in a workweek. The most common error employers make is incorrectly classifying employees as exempt when their actual job duties and compensation do not qualify them to be exempt.

The executive exemption requires that all of the following tests be met: compensation on a salary basis, at no less than \$455 per week; primary duty of "managing the enterprise or a customarily recognized department or division of the enter-

prise;" "customary and regular" direction of the work "of at least two or more full-time employees or the equivalent" (e.g., four part-time employees) who are not also supervised by others; and authority to hire, fire, promote or otherwise change the status of other employees or suggestions for such actions which are given "particular weight."

The administrative exemption is usually the most difficult to determine because often there is a fine line between sophisticated clerical work and administrative work that fits the exemption. For this exemption, all of the following must exist: compensation on a salary or fee basis, with the same minimum as for the executive exemption; primary duty of performing office or non-manual work "directly related to the management or general business operations of the employer or [its] customers;" and the primary duty "includ[ing] the exercise of discretion and independent judgment with respect to matters of significance."

The last exemption to be discussed is the professional exemption. While many employers consider their entire workforces to be "professional," the actual exemption from overtime pay requirements is very limited and is reserved for what are known as the learned or creative professions. The same salary or fee basis and minimum compensation as for the administrative exemption apply, and the primary duty "must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment." Finally, the advanced knowledge must be "in a field

of science or learning" and must be "customarily acquired by a prolonged course of specialized intellectual instruction." Some examples of the learned professions are law, medicine, accountancy, nursing and certain licensed educational positions.

Exemption for certain highly compensated employees is available for those who perform office or non-manual work, are paid \$100,000 or more annually (which must include a minimum \$455 per week on a salary or fee basis), and who customarily and regularly perform at least one of the duties of an executive, administrative or professional employee discussed earlier.

Future columns will include more information about the administrative exemption and the types of jobs that are and are not within that exemption, what is meant by the "salary basis" and additional discussions of other overtime pay-related topics. In the meantime, a number of helpful fact sheets on exemptions are available from the U.S. Department of Labor's Wage and Hour Division at [www.dol.gov](http://www.dol.gov). Click on "Wages" and then "Overtime Pay" for more information and the referenced fact sheets.

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