

**OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT:**  
**EMPLOYERS MUST BE ON HIGH ALERT**

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Over the past several years, there has been a significant increase in the number of lawsuits against employers for violating federal and state overtime laws. Accordingly, employers must be sensitive to the overtime provisions of the Fair Labor Standards Act as well as their own state's overtime laws. Plaintiffs' attorneys and employees have become increasingly aware of employees' rights with respect to overtime compensation. Furthermore, recent litigation demonstrates that employers continue to expose themselves to this growing area of litigation by misclassifying salaried employees as "exempt" from overtime laws.

The Fair Labor Standards Act ("FLSA") requires that employees receive overtime pay at the rate of time and one-half for hours worked in excess of 40 hours per week. In addition to the FLSA, many states have enacted statutes that provide greater protection to workers. Accordingly, employers must be aware of both federal and state overtime provisions.

The FLSA provides various exemptions from the general rule that employers must pay employees overtime rates for hours worked in excess of 40 hours per week. Some states have also enacted statutes providing additional exemptions. For example, Massachusetts provides a laundry list of specific occupations that are exempt from the overtime pay requirements. See M.G.L. c. 151 § 1A.

Pursuant to the FLSA, employees are generally exempt from overtime laws if they fall into one of the following "white-collar worker" exemptions: (1) executive; (2) administrative; or (3) professional. The application regulations contain a series of strict requirements for determining whether employees qualify for the white-collar worker exemptions. While the employee must be paid a salary of at least \$250 per week to qualify, this single factor is not determinative of the employee's status. Furthermore, the fact that an employee's job title is

“supervisor” or “manager” is not determinative of whether the employee is exempt from the overtime provisions of the FLSA. Rather, the exempt status turns on an analysis of the employee’s job responsibilities.

### **Executive Exemption**

An employee qualifies for an executive exemption if his or her primary duty consists of the management of the enterprise or a department of the business. To qualify for the executive exemption, the employee must also be responsible for the regular direction of work of at least two other employees.

### **Administrative Exemption**

An employee qualifies for an administrative exemption if the employee’s primary duty consists of performing office or non-manual work directly related to the management policies or general business operations of the employer or its customers. The employee must also customarily and regularly exercise discretion and independent judgment. Employees whose primary duty consists of “production work” do not qualify as administrators. This category generally includes human resource employees and accountants, but not employees who simply perform clerical work.

### **Professional Exemption**

An employee qualifies for a professional exemption if the employee’s work requires “the consistent exercise of discretion or judgment” and the employee has as his or her primary duty: (a) the performance of work “requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized education”; (b) teaching; or (c) the performance of work requiring “theoretical and practical application of highly specialized knowledge in computer systems analysis, programming, and software engineering.”

An employee may also qualify for this exemption if the employee has as his or her primary duty “work requiring invention, imagination, or talent in a recognized field of artistic endeavor.” To satisfy this requirement, the employee generally must have earned a bachelor’s

degree or its equivalent in a particular area, as distinguished from general academic courses. This category includes doctors, nurses, lawyers, artists, teachers, and computer programmers, but generally not paralegals or sales people.

### **Danger of Misclassifying Employees**

There exists a new wave of class-action lawsuits alleging that employers rob workers of overtime pay by misclassifying them as “exempt.” In one of the first such lawsuits involving an insurer to go to trial, a California trial court awarded \$90 million to more than 2,000 insurance claims adjusters in a misclassification suit. See Bell v. Farmers Ins. Exchange, 105 Cal. Rptr. 2d 59 (Cal. App. 1 Dist. 2001). In Bell, the plaintiff’s claimed that they were not “administrative” employees within the meaning of California’s Industrial Welfare Commission (“IWC”) order and were entitled to overtime compensation. The claims representatives brought a class action lawsuit against their employer for nonpayment of overtime compensation.

The court held that the claims representatives were not employed in “administrative capacities” within the meaning of the IWC establishing an “administrative” exemption from overtime requirements. In so holding, the court drew upon the FLSA and focused upon the distinction between “administrative” employees and “production” employees. While administrative employees are usually described as employees performing work directly related to management policies or general business operations of his employer or his employer’s customers, production employees are those whose primary duty is producing the commodity or commodities, whether goods or services, that the enterprise exists to produce.

Placing themselves on the production side of the administrative/production worker dichotomy, the plaintiffs produced sufficient evidence to show that they were engaged solely in the business of handling claims. Furthermore, on matters of relatively greater importance, they were simply engaged in conveying information to their supervisors. The court found that this characterization of the plaintiffs’ role in the defendant’s business organization placed them clearly outside the category of administrative workers and established their non-exempt status.

Ultimately, the Bell Court reached its decision based upon an analysis of the defendant's business and the claims representatives' role in that business. The court recognized, however, that a careful analysis of the employees' duties may be necessary to determine exempt or non-exempt status in other cases. It should be noted that California's laws are unclear with regard to claims adjusters while federal laws clearly define claims adjusters as exempt.

Other significant settlements have been reached in similar cases. Starbucks Corp., the well-known coffee shop chain, has also fallen prey to California's wage and overtime laws. The company has agreed to pay approximately 18 million dollars to workers misclassified as exempt from overtime. These are only two of many examples of businesses hit by class-action lawsuits filed under California's wage and hour laws.

Although these cases came out of California, it is not uncommon that similar suits will arise in other states, particularly in states that have vague and antiquated laws determining who is an hourly wage employee and who is exempt from the overtime laws. The success of claims in California has encouraged plaintiffs' lawyers to investigate whether companies are complying with federal overtime law. This will inevitably lead to suits in other states as workers will use the California precedent to seek retroactive overtime pay.

Employers who are found to have misclassified employees as exempt to avoid paying overtime may be liable for substantial back-pay amounts. Moreover, in certain circumstances, an employer who violates the provisions of the FLSA or state overtime laws may be forced to pay liquidated damages and reasonable attorney fees and costs. Accordingly, employers should conduct periodic self-audits to make sure they are complying with the overtime laws and ensure that their overtime policies are stated in employee handbooks. Ultimately, the California cases demonstrate that every employer must implement overtime pay policies that are consistent with state and federal requirements, or proceed at their financial peril for failing to do so.