



## INTRODUCTION TO WAGE AND HOUR LAW

John P. Quirke, Esq.

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## Employee Compensation: What Laws Govern

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## Federal Laws

- The Fair Labor Standards Act ("FLSA")
- The Equal Pay Act ("EPA")
- Title VII of the Civil Rights Act of 1964 ("Title VII")
- Americans with Disabilities Act ("ADA")
- Age Discrimination in Employment Act ("ADEA")

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## State Laws

- Every state has its own wage and hour laws
- State laws contain many of the same provisions (such as the minimum wage). They may also extend protections to industries not covered by the FLSA.

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## State Laws (cont.)

- State laws also cover issues the FLSA does not, such as breaks and wage garnishment.
- Wage payment and collection laws
- A note on the New Jersey minimum wage.

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## EXCEPTIONS TO THE FLSA

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## Independent Contractor Status Under the FLSA

- The extent to which the services rendered are an integral part of the principal's business
- The degree of independent business organization and operation
- The amount of the alleged contractor's investment in facilities and equipment
- The nature and degree of control by the principal

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## Independent Contractor Status Under the FLSA

- The alleged contractor's opportunities for profit and loss
- The amount on initiative, judgement, or foresight required for the alleged contractor's success
- The permanency of the relationship

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## EXEMPTIONS FROM FLSA OVERTIME REQUIREMENTS

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## Exemption Basics

- Salary *basis* test
- Salary *level* test
- Duties test
- FLSA contains 34 separate exemptions
- The "old" and "new" white collar exemptions

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## Outside Sales Exemption

- Specifies that sales work must be the employee's primary responsibility
- No salary basis
- No salary level

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## Administrative Exemption

- Primary duty is performing non-manual or office work directly related to management or general business operations
- Holds a "position of responsibility"
  - Performing work of substantial importance; or
  - Performing work requiring a high level of skill or training

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## Administrative Exemption

- Minimum salary increased to \$455/week

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## Executive Exemption

- Applicable to employees who have management as their primary duty; who direct the work of two or more full-time employees;
- Who have the authority to hire and fire or make recommendations regarding decisions affecting the employment status of others;
- Minimum salary of \$455/week

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## Professional Exemption

- Applicable to employees who perform work requiring advanced knowledge and education, but which may also be acquired by alternative means such as combination of intellectual instruction and work experience
- Minimum salary of \$455/week, except for doctors, lawyers, and accountants

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## Creative Professional Exemption

- Primary duty of performing work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor
- Minimum salary increased to \$455/week

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## Computer Employee Exemption

- Primary duty consists of:
  - Systems analysis
  - Design, development, testing, or modification of new systems, programs, or machine operating systems
- Actually employed as a systems analyst, programmer, software engineer, or similar

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## Computer Employee Exemption Test

- Minimum salary of \$455/week or \$27.63/hour

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## The Salary Basis Test

- Employee receives same pay regardless of quality or quantity of work
- Paid time off
- Partial day absences
- Disciplinary suspensions
- “Extra” payments

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## QUESTIONS

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## NON-EXEMPT EMPLOYEES

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## What Non-Exempt Employees Get Paid For

- All hours “permitted” to work
- All hours “suffered” to work

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## On the Clock

- Breaks of 20 minutes or less--”on”
- Breaks of more than 20 minutes or more where the employee is not free to leave or go about his or her own business

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## On the Clock

- Changing clothes or cleaning up, if required by nature of work (not synonymous w/wearing a uniform)
- Cleaning tools or machinery after use
- Medical attention during work hours and at the employer’s direction

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## On the Clock

- Prep. work which is necessary to perform one's duties
- Training programs required by the employer
- Waiting for a work assignment after reporting for work or during the work day

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## Off the Clock

- Absences for whatever reason, e.g. vacation, illness, holidays
- Commuting time to or from work, unless it occurs during normal working hours
- Changing clothes for employee's convenience

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## Off the Clock

- Jury duty
- Routine shutdowns, where the employee is free to leave the work site
- Meal periods, so long as the employee is free from all work duties and the break is long enough to be useful

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## Off the Clock

- Training or seminars attended voluntarily by the employee for the employee's benefit, not the employer's benefit
- Sleep time, so long as the "tour of duty" is 24 hours or longer and no work is required

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## OVERTIME

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## Payment Methods for Non-Exempt Employees

- Hourly
- Salaried
  - Fixed workweek
  - Fluctuating workweek
- Commission

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## Payment Methods for Non-Exempt Employees

- By the day or job
- Piece rates
- 80 hour/2 week cycle for health care professionals
- 2080 plans for union employees

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## Payment Methods for Non-Exempt Employees

- Belo plans
- Comp. time
- Public safety professionals

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## Overtime Considerations

- Kicks in only after 40 hours *worked*
  - Vacations
  - Holidays
- Bonuses

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## Overtime Considerations

- Cannot "average" weeks
- "No overtime" policies
  - Fluctuating workweek method is better

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## Salaried Employee, Fixed Workweek: Overtime Calculation

### Assumptions:

- Employee paid \$35k/year
- Employee has fixed 35-hour workweek

NOTE: You still do not start paying overtime until the 41st hour

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## Salaried Employee, Fixed Workweek: Overtime Calculation

### Calculation:

- Calculate weekly rate: \$673.07/week
- Calculate normal hourly rate: \$19.23/hour
- Calculate overtime rate:  
 $\$19.23 \times 1.5 = \underline{\$28.85}$

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**Salaried Employee, Fixed Workweek: Overtime Calculation**

- Assume yearly salary, by agreement, covers the first 40 hours (even though fixed workweek might still only be 35 hours):
- (a) Weekly rate is still \$673.07



**Salaried Employee, Fixed Workweek: Overtime Calculation**

- (b) Calculate normal hourly rate:  
 $\$673.07/40 \text{ hours} = \underline{\$16.83}$

*Difference is \$2.40/hour less than for a fixed 35 hour week*



**Salaried Employee, Fluctuating Workweek: Overtime Calculation**

Assumptions:

- Employee is paid \$35k/year, regardless of hours worked in any week – 0 to 40 hours.
- Employee gets a 50% hourly premium for every hour over 40 (salary already covered “straight” time compensation).
- Employee works 55 hours for the week in question.



**Salaried Employee, Fluctuating Workweek: Overtime Calculation**

Calculation:

- (a) Calculate average weekly rate: \$673.07  
 (b) Calculate average hourly rate for week in question:  
 $\$673.07/55 \text{ hours} = \underline{\$12.24}$



**Salaried Employee, Fluctuating Workweek: Overtime Calculation**

Calculation:

- (c) Calculate half (50%) premium: \$6.12  
 (d) Calculate total premium for week:  
 $\$6.12 \times 15 \text{ hours} = \underline{\$91.80}$



**Salaried Employee, Fluctuating Workweek: Overtime Calculation**

- As overtime hours increase, average hourly wage goes down.  
 (60 hour week = \$11.22/hour, for a 5.61/hour premium.  $\$5.61/\text{hour} \times 20 \text{ hours} = \$112.20$  total premium.)
- The balance is that the employee still earns \$673.07 a week, even if the employee works one hour during the week.



## Employee Paid on Commission: Overtime Calculation

### Assumptions:

- Payment is “draw and commissions” not “draw against commissions”
- Employee paid \$20k/year and \$10 commission on every widget manufactured and sold by the employee.
- Employee works 50 hours in a week and sells 70 widgets.

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## Employee Paid on Commission: Overtime Calculation

### Calculations:

- (a) Calculate weekly wage on salary: \$384.62
- (b) Calculate hourly wage: \$7.69
- (c) Calculate average hourly wage for commissions: \$14
- (d) Combine hourly rates: \$21.69
- (e) Calculate overtime rate:  
 $\$21.69 \times 1.5 = \underline{\$32.54}$

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## Belo Plans

- Employer agrees with employee on a standard rate for hours 1-40 (e.g. \$10/hr)
- Employer agrees to pay employee a set amount of overtime hours weekly at 1.5 times the standard rate (e.g. guaranteed 10 hours overtime at \$15/hr), *regardless of whether the employee works more or less than 40 hours in the week*

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## Belo Plans (cont.)

- Therefore, the employee is always guaranteed a set weekly salary that accounts for a certain level of overtime
- Any overtime above the agreed-upon amount is still compensated at 1.5 times the standard rate
- The employer gains the ability to more accurately forecast labor costs and gains an ease in bookkeeping

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## Bonuses

- Whether they are included in overtime depends upon the nature of the bonus
- FMLA-related bonus issues

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## QUESTION & ANSWER

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