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Overtime Pay Compliance for a New Era of Employment Law:

Effective Strategies and Planning Tools for Employers

A GUIDE TO EMPLOYMENT COMPLIANCE UNDER
THE FAIR LABOR STANDARDS ACT (“FLSA”)

By: Adam Hersh, Esq.

DISCLAIMER: This e-book is for educational purposes only. It does not offer and is not a substitute for legal advice. The documents propose a number of solutions and the examples are specific to Florida employers. Which solution is best for your business requires a full legal analysis. You are encouraged to speak with an attorney to discuss the specific factors in your business prior to implementing any solution. Additionally, this e-book does not establish an attorney-client relationship and is not for advertising or solicitation purposes. The hiring of an attorney is an important decision not to be based on advertisements, or e-books.

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Important: This E-Book provides guidance on the Fair Labor Standards Act ("FLSA"). It does not address any state specific requirements. Some states have daily, weekend, or holiday overtime requirements, which the FLSA does not. Additional states have thresholds or standards in excess of the FLSA standards, which employer much comply with. The FLSA only represents the minimum requirements. States have the ability to pass laws increasing the requirements for which employers much comply with. Employment law is often dictated based on the state the employee works in, travels to, or resides in. Not where the business is physically based. Therefore, employers should comply with a licensed attorney with the knowledge to answer their questions about any state laws applicable to their business.



GLOSSARY OF TERMS

Exempt

Employees who are deemed exempt under the FLSA do not have to be paid overtime.

Non-Exempt

Employees who are deemed non-exempt under the FLSA have to be paid overtime.

Overtime

Overtime means “time and a half,” or 1.5 times the employee’s hourly rate. See the salary conversion charts in this e-book if you need to determine the employee’s hourly rate by dividing the employee's weekly wage by 40 hours.

FLSA

The Fair Labor Standards Act



INTRODUCTION

WHY OVERTIME LAW COMPLIANCE MATTERS

Overtime Violations: How an Employee Making \$50,000 Can Cost your Business Over \$150,000

I wrote this e-book because one of the most-costly mistakes a business can make is when a business does not pay its employees overtime when required to do so by law. At Hunter Business Law, we strive to keep our business clients compliant so that their hard-earned money is spent on growing their business, not paying fines to the government or settlement checks to employees and their attorneys to resolve a lawsuit. I hope that this e-book and the tools provided herein help you avoid this costly mistake.

Under federal law there are two types of employee classifications relevant to overtime pay: exempt employees and non-exempt employees. Every employee is either exempt or non-exempt. Exempt employees are exempt from the overtime requirements and non-exempt employees are not exempt and, under federal law, must be paid overtime for each hour they work over 40 in a week. Some states have their own overtime laws; this blog is about federal overtime laws.

One major misconception is that all salaried employees are exempt from overtime. This is not true. **Simply because an employee is on salary does not mean the employee is not entitled to overtime.** To be exempt, an employee must meet a specific salary threshold and the employee must meet a specific job duties test. Notably, the salary threshold has recently been increased from \$23,660.00 to \$35,568.00 effective January 1, 2020.

Even under the new FLSA salary threshold, many employees do not meet the job duties test and are misclassified as exempt when they are really non-exempt; thus, the employees are not being paid overtime when the employees should be.

Here is why not paying an employee overtime can be so costly. Let's consider a misclassified employee who makes \$50,000 per year. A misclassified employee is an employee who is classified as exempt (and not paid overtime) when he or she should be classified as nonexempt; and therefore, must be paid overtime. A \$50,000 annual salary equals \$24.04 per hour. Overtime must be paid at 1.5 times the employee's regular rate of pay (1.5 times \$24.04 equals \$36.06 per hour). If the employee works 50 hours per week for a year, consider the potential liability of the employer:

- The employee should be paid \$36.06 for each overtime hour he or she worked (even if salaried). \$36.06 for 10 extra hours per week equals \$360.60 per week. \$360.60



times 50 weeks per year (allowing two vacation weeks) equals \$18,030 of unpaid overtime for that one employee.

- If the employer doesn't pay the overtime and the employee files a claim against the employer, then the employer owes \$18,030 in unpaid overtime. It doesn't end there.
- Under the law, the unpaid overtime amounts can be doubled as a penalty making it now over \$36,000 owed by the employer to the employee. Bad enough yet? There is more.
- If the employee prevails, the employer can also be required to pay the employee's attorney's fees, on top of the employer's own defense costs. The median hours for litigating an employment case is 374 hours of attorney time at \$300 per hour (National Center for State Courts - www.courtstatistics.org; Volume 20, Number 1, January 2013), which equates to slightly more than \$110,000. Granted, the employer may not fight the claim, significantly reducing the attorney's fees expense.
- Now add governmental fines, penalties, and back taxes owed on the unpaid overtime.

This is one employee! Imagine what happens when there are multiple employees. Unpaid overtime violations can total six figures quickly.

All employers should annually (and immediately when legislative changes have been implemented):

- (1) Audit each of their employees to make sure they are properly classified as exempt or non-exempt;
- (2) Ensure that they have proper timesheets for any non-exempt employee. Remember, even salaried employees can be non-exempt; and thus, their time needs to be tracked and overtime paid; and
- (3) Review all state laws which the employer may be subject to.

If you are an employer and have concerns about whether you are properly classifying your employees and paying overtime when it is required, please contact me at Hunter Business Law for guidance. It only takes one employee who knows his rights to make your mistake a costly one for your company.

Enjoy this guide to overtime compliance.

Adam Hersh, Esquire

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INTRODUCTION TO THE FLSA-EXEMPT vs. NON-EXEMPT CHART

(Last Updated December 2019)

The following chart is designed to assist you with evaluating whether each of your employees is exempt or non-exempt from overtime laws. This chart is based on the FLSA legislative update effective as of [January 1, 2020](#).

As an employer, ignorance of legislative changes will not be an excuse so please (1) make sure you are currently properly classifying your employees as exempt v. non-exempt; and (2) review the changes to the FLSA and be prepared to implement these changes starting January 1, 2020.

As previously stated, the following chart does not account for state specific laws for which an employer may be subject too.



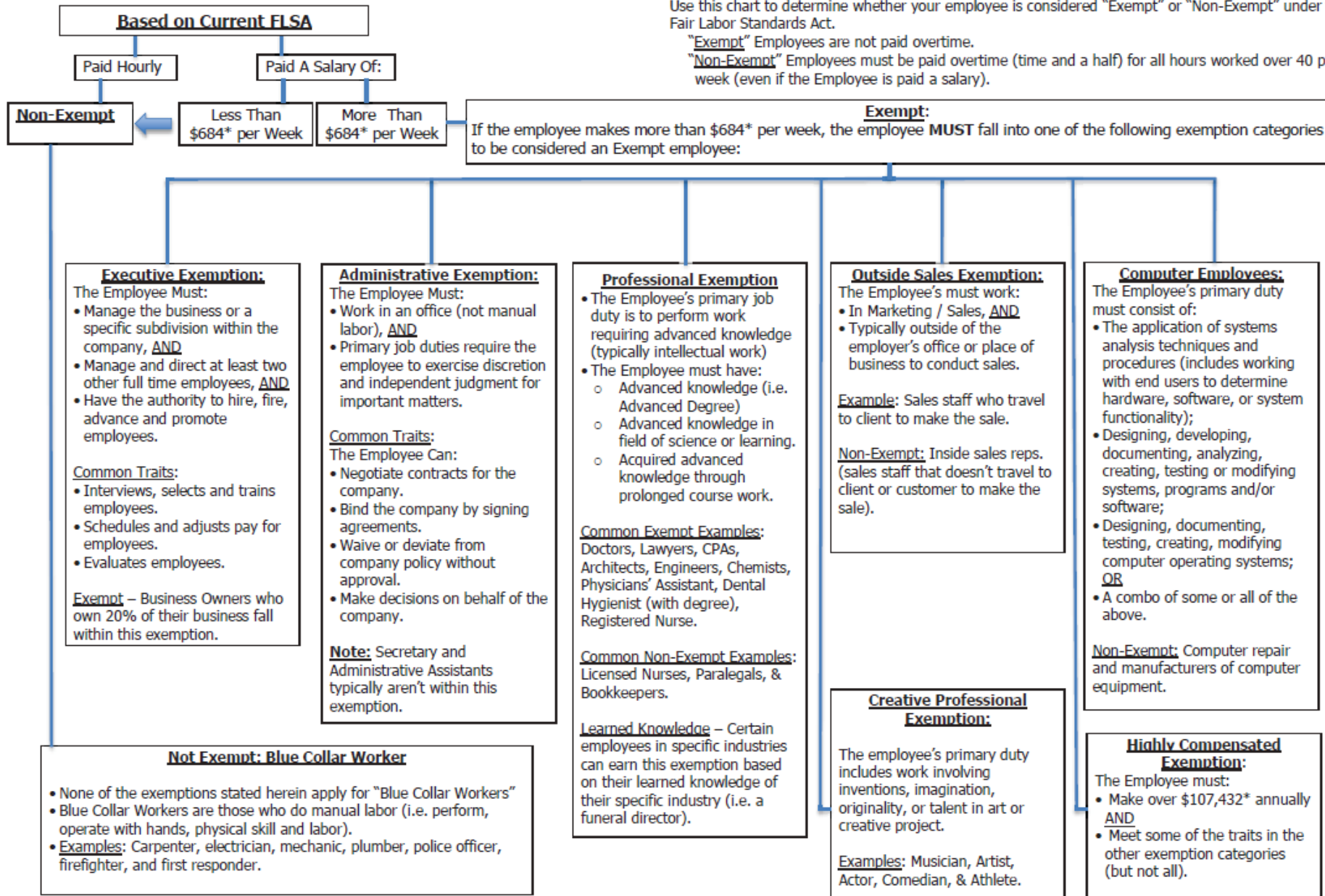
Fair Labor Standards Act Exempt vs. Non-Exempt Test

Instructions:

Use this chart to determine whether your employee is considered "Exempt" or "Non-Exempt" under the Fair Labor Standards Act.

"Exempt" Employees are not paid overtime.

"Non-Exempt" Employees must be paid overtime (time and a half) for all hours worked over 40 per week (even if the Employee is paid a salary).



Disclaimer: This chart is for informational purposes and not for legal advice. This chart does not account for state or municipal specific laws for which an employer may be subject too. If you have any questions regarding whether an employee is Exempt or Non-Exempt, contact Hunter Business Law at 813-867-2640 or Info@Hunterbusinesslaw.com.

INTRODUCTION TO THE CONVERSION CHARTS

The next three charts are designed to assist you with evaluating whether your employees currently meet the salary threshold for exemption from payment of overtime established by the FLSA.

Additionally, you can use these charts to determine when it makes sense to increase the salary of those employees who meet other requirements for exemption from overtime pay but do not meet the salary threshold.

The current salary threshold is \$ 684.00 per week as a guaranteed minimum weekly salary (bonuses, commissions, and other non-guaranteed payments do not count).

Remember, meeting the salary threshold is but one of the factors for exemption. Do not ignore the fact that the employee must also qualify under the other tests discussed in this e-book.



Salary Converter

Hourly to Annual Salary Converter

Hourly Rate	Annual Salary
\$9.00	\$18,720.00
\$10.00	\$20,800.00
\$11.00	\$22,880.00
\$12.00	\$24,960.00
\$13.00	\$27,040.00
\$14.00	\$29,120.00
\$15.00	\$31,200.00
\$16.00	\$33,280.00
\$17.00	\$35,360.00
\$18.00	\$37,440.00
\$19.00	\$39,520.00
\$20.00	\$41,600.00
\$21.00	\$43,680.00
\$22.00	\$45,760.00
\$23.00	\$47,840.00
\$24.00	\$49,920.00
\$25.00	\$52,000.00
\$26.00	\$54,080.00
\$27.00	\$56,160.00
\$28.00	\$58,240.00
\$29.00	\$60,320.00
\$30.00	\$62,400.00
\$31.00	\$64,480.00
\$32.00	\$66,560.00
\$33.00	\$68,640.00
\$34.00	\$70,720.00
\$35.00	\$72,800.00
\$36.00	\$74,880.00
\$37.00	\$76,960.00
\$38.00	\$79,040.00
\$39.00	\$81,120.00
\$40.00	\$83,200.00
\$42.50	\$88,400.00
\$45.00	\$93,600.00
\$47.50	\$98,800.00
\$50.00	\$104,000.00
\$55.00	\$114,400.00

Annual Salary to Hourly Converter

Annual Salary	Hourly Rate
\$25,000.00	\$12.02
\$27,500.00	\$13.22
\$30,000.00	\$14.42
\$32,500.00	\$15.63
\$35,000.00	\$16.83
\$37,500.00	\$18.03
\$40,000.00	\$19.23
\$42,500.00	\$20.43
\$45,000.00	\$21.63
\$47,500.00	\$22.84
\$50,000.00	\$24.04
\$52,500.00	\$25.24
\$55,000.00	\$26.44
\$57,500.00	\$27.64
\$60,000.00	\$28.85
\$62,500.00	\$30.05
\$65,000.00	\$31.25
\$67,500.00	\$32.45
\$70,000.00	\$33.65
\$72,500.00	\$34.86
\$75,000.00	\$36.06
\$77,500.00	\$37.26
\$80,000.00	\$38.46
\$82,500.00	\$39.66
\$85,000.00	\$40.87
\$87,500.00	\$42.07
\$90,000.00	\$43.27
\$92,500.00	\$44.47
\$95,000.00	\$45.67
\$97,500.00	\$46.88
\$100,000.00	\$48.08
\$105,000.00	\$50.48
\$110,000.00	\$52.88
\$115,000.00	\$55.29
\$120,000.00	\$57.69
\$125,000.00	\$60.10
\$130,000.00	\$62.50

Note: Under the Fair Labor Standard Act ("FLSA"), employees **MUST** make above the 40th percentile of weekly earnings for full time salaried workers (\$921 today) to be eligible for consideration of exemption status under the FLSA. When an employee is exempt, the employee does not need to be paid overtime. When an employee is non-exempt, the employee must be paid overtime for all hours worked over 40. If an employee meets the salary threshold, the employee **MUST** also fall within one of the seven exemption categories to be considered exempt.

If you have any questions, please call Adam Hersh Esq. at (813) 867-2640



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Annual Salaries with Overtime

Annual Salary with Weekly Overtime Costs

Hourly Rate	Cost Per	Annual Salary	
	OT Hour	5 Hours Weekly OT	10 Hours Weekly OT
\$25,000.00	\$18.03	\$29,687.50	\$34,375.00
\$27,500.00	\$19.83	\$32,656.25	\$37,812.50
\$30,000.00	\$21.63	\$35,625.00	\$41,250.00
\$32,500.00	\$23.44	\$38,593.75	\$44,687.50
\$35,000.00	\$25.24	\$41,562.50	\$48,125.00
\$37,500.00	\$27.04	\$44,531.25	\$51,562.50
\$40,000.00	\$28.85	\$47,500.00	\$55,000.00
\$42,500.00	\$30.65	\$50,468.75	\$58,437.50
\$45,000.00	\$32.45	\$53,437.50	\$61,875.00
\$47,500.00	\$34.25	\$56,406.25	\$65,312.50
\$50,000.00	\$36.06	\$59,375.00	\$68,750.00
\$52,500.00	\$37.86	\$62,343.75	\$72,187.50
\$55,000.00	\$39.66	\$65,312.50	\$75,625.00
\$57,500.00	\$41.47	\$68,281.25	\$79,062.50
\$60,000.00	\$43.27	\$71,250.00	\$82,500.00
\$62,500.00	\$45.07	\$74,218.75	\$85,937.50
\$65,000.00	\$46.88	\$77,187.50	\$89,375.00
\$67,500.00	\$48.68	\$80,156.25	\$92,812.50
\$70,000.00	\$50.48	\$83,125.00	\$96,250.00
\$72,500.00	\$52.28	\$86,093.75	\$99,687.50
\$75,000.00	\$54.09	\$89,062.50	\$103,125.00
\$77,500.00	\$55.89	\$92,031.25	\$106,562.50
\$80,000.00	\$57.69	\$95,000.00	\$110,000.00
\$82,500.00	\$59.50	\$97,968.75	\$113,437.50
\$85,000.00	\$61.30	\$100,937.50	\$116,875.00
\$87,500.00	\$63.10	\$103,906.25	\$120,312.50
\$90,000.00	\$64.90	\$106,875.00	\$123,750.00
\$92,500.00	\$66.71	\$109,843.75	\$127,187.50
\$95,000.00	\$68.51	\$112,812.50	\$130,625.00
\$97,500.00	\$70.31	\$115,781.25	\$134,062.50
\$100,000.00	\$72.12	\$118,750.00	\$137,500.00
\$105,000.00	\$75.72	\$124,687.50	\$144,375.00
\$110,000.00	\$79.33	\$130,625.00	\$151,250.00
\$115,000.00	\$82.93	\$136,562.50	\$158,125.00
\$120,000.00	\$86.54	\$142,500.00	\$165,000.00
\$125,000.00	\$90.14	\$148,437.50	\$171,875.00
\$130,000.00	\$93.75	\$154,375.00	\$178,750.00

Note - This chart shows the overtime rate for the above annual salaries, and how much extra (on an annual basis) paying overtime costs. If an employee does not meet the salary threshold test, but meets all the other exemption requirements, you should use this chart to determine whether the overall costs of paying overtime each week will be greater than or less than the cost of giving the employee a flat salary increase (so that the employee will meet the minimum salary threshold requirements and therefore be exempt).

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Hourly Wages with Overtime

Hourly Wage (with Weekly Overtime) to Annual Salary Converter

Hourly Rate	Annual Salary		
	No Overtime	5 Hours Weekly OT	10 Hours Weekly OT
\$9.00	\$18,720.00	\$22,230.00	\$25,740.00
\$10.00	\$20,800.00	\$24,700.00	\$28,600.00
\$11.00	\$22,880.00	\$27,170.00	\$31,460.00
\$12.00	\$24,960.00	\$29,640.00	\$34,320.00
\$13.00	\$27,040.00	\$32,110.00	\$37,180.00
\$14.00	\$29,120.00	\$34,580.00	\$40,040.00
\$15.00	\$31,200.00	\$37,050.00	\$42,900.00
\$16.00	\$33,280.00	\$39,520.00	\$45,760.00
\$17.00	\$35,360.00	\$41,990.00	\$48,620.00
\$18.00	\$37,440.00	\$44,460.00	\$51,480.00
\$19.00	\$39,520.00	\$46,930.00	\$54,340.00
\$20.00	\$41,600.00	\$49,400.00	\$57,200.00
\$21.00	\$43,680.00	\$51,870.00	\$60,060.00
\$22.00	\$45,760.00	\$54,340.00	\$62,920.00
\$23.00	\$47,840.00	\$56,810.00	\$65,780.00
\$24.00	\$49,920.00	\$59,280.00	\$68,640.00
\$25.00	\$52,000.00	\$61,750.00	\$71,500.00
\$26.00	\$54,080.00	\$64,220.00	\$74,360.00
\$27.00	\$56,160.00	\$66,690.00	\$77,220.00
\$28.00	\$58,240.00	\$69,160.00	\$80,080.00
\$29.00	\$60,320.00	\$71,630.00	\$82,940.00
\$30.00	\$62,400.00	\$74,100.00	\$85,800.00
\$31.00	\$64,480.00	\$76,570.00	\$88,660.00
\$32.00	\$66,560.00	\$79,040.00	\$91,520.00
\$33.00	\$68,640.00	\$81,510.00	\$94,380.00
\$34.00	\$70,720.00	\$83,980.00	\$97,240.00
\$35.00	\$72,800.00	\$86,450.00	\$100,100.00
\$36.00	\$74,880.00	\$88,920.00	\$102,960.00
\$37.00	\$76,960.00	\$91,390.00	\$105,820.00
\$38.00	\$79,040.00	\$93,860.00	\$108,680.00
\$39.00	\$81,120.00	\$96,330.00	\$111,540.00
\$40.00	\$83,200.00	\$98,800.00	\$114,400.00
\$42.50	\$88,400.00	\$104,975.00	\$121,550.00
\$45.00	\$93,600.00	\$111,150.00	\$128,700.00
\$47.50	\$98,800.00	\$117,325.00	\$135,850.00
\$50.00	\$104,000.00	\$123,500.00	\$143,000.00
\$55.00	\$114,400.00	\$135,850.00	\$157,300.00

Note - To effectively factor in the impact of and manage overtime, your business must accurately budget for wages. If your business elects to convert its non-exempt salaried employees to hourly, this chart shows what the annual salary is for each hourly wage if the employee works 40, 45, or 50 hours in a week. Under the FLSA your business must pay overtime (time and half) after a non-exempt employee works more than 40 hours in a week. For purposes of this chart an employee making \$10 per hour will earn \$10 per hour for hours 1-40, and \$15 per hour for hours 41+.

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Tracking Hours Tips for Employers

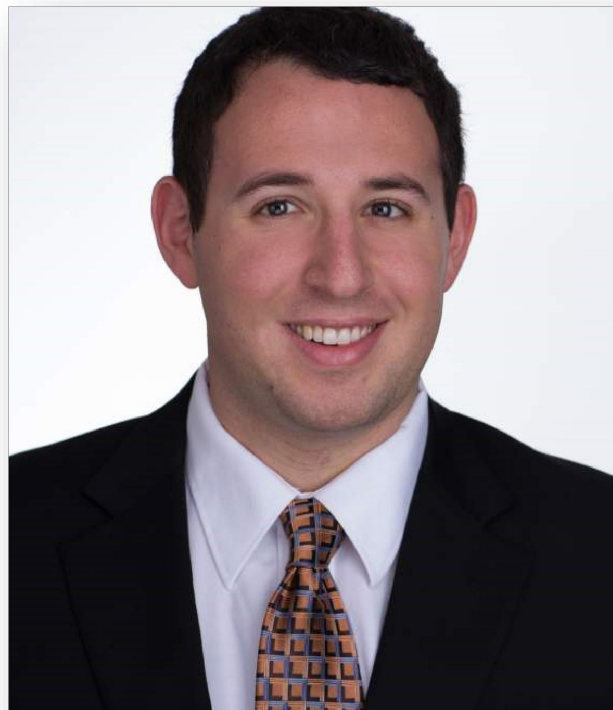
- Employers should track the hours for each of their non-exempt employees (whether the employee is paid hourly or salaried).
- Employers must compensate all non-exempt employees who work more than 40 hours in a work week with overtime pay.
 - Note – This 40-hour rate is not multiplied based on payroll frequency. This means that if an employer does biweekly payroll, then an employee who works over 40 hours during a given week of a pay period must be paid overtime regardless of whether they worked 80 hours during the pay period. For example, if a non-exempt employee works 50 hours in week 1 of a pay period and 25 hours in week 2 of a pay period, the employee must be paid overtime for the extra 10 hours worked in week 1 even though they worked less than 80 hours during the pay period.
- Employers must pay non-exempt employees for all work done outside the workplace.
 - Example: An employee leaves the office and then drives a half hour to the post office to mail a letter. This counts towards the employee's work week and thus should be added to their total hours for the week.
 - Example: An employee responds to an email after work hours. The time spent reading and responding to emails counts towards the employee's work week and should be added to his/her total hours for the week.
 - Example: An employee answers a call from their supervisor or a client outside of work hours. This counts towards the employee's work week, and the time spent on the phone should be added to his/her total hours for the week.
 - Example: An employee attends an after-hours client dinner or work-related function. If this is a work obligation or a request of the employer, it is considered work time. The time spent traveling to and from the dinner should be added to his/her total hours for the week, and the employee should be reimbursed for the meal.
 - Note – If the employee is non-exempt and paid a salary, all of the aforementioned examples would count towards the employee's total weekly hours (40). If the employee does not reach the 40-hour mark in the work week, then the employer would not pay overtime to the employee for performing any of the tasks listed above. However, if the employee has exceeded 40 hours, then the employer is responsible for paying overtime compensation.
- Weeks in which employees receive paid time off or a paid holiday do not count towards the 40-hour weekly limit.
 - Example: During the work week of July 1st – July 7th, the employee works 35 hours and is given a paid day off for July 4th (8 hours). The employee will receive a total of 43 paid hours for the work week, but because 8 of those hours are on a paid holiday, the employee does not need to be paid overtime for the extra 3 hours. (Holidays and paid time off are calculated separately.)



Would you like assistance with making sure your company is compliant with overtime laws?

Interested company is compliant with overtime laws?
in attending a FLSA seminar or obtaining more information on this matter?

CONTACT US – WE ARE HERE TO HELP!



Adam Hersh, Esquire



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