



New Overtime Rules

Look out for five previously exempt categories

by: Greg Goldberg, BTA General Counsel

On July 1, the U.S. Department of Labor (DOL) implemented new overtime rules under the Fair Labor Standards Act (FLSA). It is important for BTA members to be aware of these changes because the new rules extend eligibility for overtime pay to certain categories of salaried workers that were previously exempt.

Overtime rules vary slightly in different parts of the country. Most states calculate overtime pay on a weekly basis, meaning eligible employees begin to earn overtime pay after completing 40 cumulative hours of work in a single week. By contrast, a minority of states calculate overtime pay on a daily basis. In those states, eligible employees begin to earn overtime pay after completing eight hours of work in a single day.

To illustrate the difference, here is an example. In New York or Illinois, an eligible employee who works 42 hours in a single week will earn two hours of overtime pay for that week. In California, it does not matter how many hours an eligible employee accrues per week, only per day. Thus, an eligible employee who works 10 hours in a single day will also earn two hours of overtime pay, even if the employee's weekly total is less than 40 hours. States calculate the rate of pay for overtime at one-and-a-half times an employee's regular hourly wage.

The DOL's new rules break down which employees are eligible to earn overtime pay versus those who remain exempt. Specifically, there are five categories of salaried workers, all previously exempt from earning overtime pay, who are now eligible to earn overtime pay if their annual salary falls below the DOL's minimum standard. The first three categories — the so-called EAP exemptions — include executive, administrative and professional employees. The last two categories — which are particularly relevant to the dealer channel — include computer and outside sales employees.

Employees whose jobs fall within these five categories (i.e., EAP, computer or outside sales) are now eligible to earn overtime pay if their annual salaries are less than \$43,888. On Jan. 1, 2025, the minimum standard salary will increase to \$58,656. The minimum standard salary amount will increase again on Jan. 1, 2027, and then once every three years thereafter, according to a methodology indexed to market data.

In order to qualify as an EAP, computer or outside sales employee, an employee's job description and job duties must fit within the DOL's definitions. "Executive" roles refer to



management. An executive must manage an entire business, or a recognized department or subdivision of a business, and have at least two full-time direct reports. An executive also must have the authority to hire or fire employees, or have meaningful input into personnel decisions.

"Administrative" employees include individuals performing ministerial work that assists management or supports the general business operations of the employer or the employer's customers. The most common example is an administrative assistant. Administrative employees must be empowered to make decisions using independent judgment based on the employee's evaluation of present facts and potential outcomes.

"Professional" employees fall into two categories: learned or creative. Learned professionals perform work utilizing advanced knowledge (e.g., attorneys, physicians or other occupations requiring postgraduate education or specialized training). Creative professionals work in recognized artistic or creative fields (e.g., actors and musicians).

"Computer" employees include systems analysts, computer programmers, software engineers or other similarly skilled workers. Computer employees' job duties must consist of designing and developing computer systems or computer programs, or applying systems analysis techniques and procedures. Dealers tempted to categorize copier/MFP technicians as computer employees should proceed cautiously and ensure that the jobs their technicians perform are consistent with DOL regulations.

"Outside sales" employees must make sales or obtain orders for products or services paid for by clients or customers of the employer. As the name implies, outside sales employees must work primarily outside of their employer's place of business.

Misclassification of employees as exempt versus non-exempt can be a costly mistake for an employer. Damages may include multiple years' worth of unpaid overtime pay plus attorneys' fees. If you have questions about how the DOL's new rules may apply to your business, I encourage you to contact me. ■

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