

# Overtime Rules Under the FLSA

BY ANDREW GOULD, ESQ.

**THE FAIR LABOR STANDARDS ACT** (the "Act") is a complex set of rules and regulations that govern overtime for most businesses in the country. Overtime under the Act is additional compensation (i.e., 1-1/2 times regular pay) for over 40 hours worked in a workweek.

Everyone is generally entitled to overtime pay unless two conditions are met: 1) the individual is paid a salary (i.e., meets the "salary basis test") and 2) the duties the person performs are such that she or he falls within one of the exemptions from overtime (i.e., meets the duties test). In other words, if you are paid a salary (i.e., your compensation does not fluctuate based on the quality or quantity of your work), and you meet certain specific criteria under one of the FLSA's tests, you are not entitled to any additional compensation no matter how many hours you work in a week.

Common exemptions include the "Professional Exemption" (i.e., doctors, lawyers, etc.), "Executive Exemption" (i.e., CEOs, heads of departments, etc.), and "Administrative Exemption" (i.e., account managers, executive assistants, etc.). Other exemptions (with their own unique compensation and duties tests) apply to persons who principally engage in outside sales and certain computer professionals.

Just because a business is paying its employees a salary does not necessarily mean that it is not required to pay them overtime. Companies pay non-exempt employees a salary all the time, and there is nothing right or wrong about doing so. But that pay practice does not dictate whether or not those employees should be paid time-and-a-half should they work late one night during the week or on a weekend.

In addition, if you want to avoid incurring overtime for your non-

exempt employees, it is not enough to simply tell them not to work beyond 40 hours in a workweek. If someone disregards that directive, an employer is within its rights to discipline that individual, which may include termination depending on the circumstances, but the time spent beyond 40 hours must be paid. This is known as "off the clock" work and, in any industry, it is a serious problem.

To learn more about overtime rules, contact an employment lawyer or visit the Department of Labor's Web site ([dol.gov](http://dol.gov)). The bottom line is that information is power when it comes to the FLSA. Employers should be familiar with the law and regulations, should take care to properly classify its employees, and should be sure non-exempt employees are paid their proper rate for hours worked. Employees should be aware of their company's policies and procedures



regarding overtime, should secure authorization from their employer if that is required, and, if they have a question about the issue, should speak with their supervisor or human relations manager. ◻

*Andrew Gould is a labor and employment attorney at the law firm of Wick Phillips, LLP. He is board certified by the Texas Board of Legal Specialization. e-mail: [andrew.gould@wickphillips.com](mailto:andrew.gould@wickphillips.com)*

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