



## EMPLOYER BULLETIN

# THE FAIR LABOR STANDARDS ACT: OVERTIME PAY AND ITS EXEMPTIONS

Under the Fair Labor Standards Act (“FLSA”) overtime is the term used to define any hours that are actually worked in excess of 40 hours in a defined work week. Employers are not required to include non-worked hours such as vacation, sick or holiday pay in the calculation as to whether overtime has been worked. However, bonuses for quality of work, attendance or similar accomplishments are considered part of the regular hourly rate for determining overtime.

Eligible employees (those who are “non-exempt”) are entitled to be paid one and one-half (1 1/2) times their base hourly rate for the overtime. Overtime cannot be waived for non-exempt employees under any circumstances. Individuals who are “exempt” employees are not eligible for overtime pay and by the nature of their responsibilities and level of decision making ability, are expected to work whatever hours are necessary to perform their job. Employers must understand the FLSA exemption tests to ensure they are properly classifying their employees as exempt or non-exempt.

As a general threshold, to be considered exempt, an employee must be paid on a salary basis of not less than \$455 per week (\$23,660 annually) and which is not subject to reduction because of variances in the quality or quantity of work, certain absences or disciplinary reasons. If an employee meets this salary level test, he/she will be exempt if he/she performs exempt job duties. The exempt job classifications are: executive, administrative, professional, highly skilled computer employees, outside sales and highly compensated employees.

The overtime exemptions have strict, fact-specific requirements based upon an employee’s actual job duties and responsibilities. In order to be exempt, the criteria established by the Department of Labor must be met. Employers cannot assume that because an employee is “salaried” or is given a certain job title that he/she is an exempt employee. It is the employee’s actual job duties that must be evaluated as well as how the job duties fit into the company’s overall operations in determining whether the employee is exempt. Innocent errors in misclassifying employees can lead to costly ramifications.

Employees who prevail on claims for unpaid overtime are entitled to the difference between what they were paid and the amount they would have been paid had the employer paid them overtime (for a two year period), liquidated damages, plus interest and attorney fees. Further, if an employee files an administrative claim with the Department of Labor, the agency may audit the employer’s payroll records which could expand beyond the initial complaint and potentially expose employers to scrutiny of all their wage and hour policies. Although the number of violations have been decreasing, in fiscal year 2008, more than 197,000 employees received a total of \$123 million in unpaid overtime and back wages. Thus, it is important that employers examine their policies and job descriptions and duties to ensure compliance. This may include revising job descriptions or reclassifying employees as appropriate. In order to avoid potential problems, employers should review their overtime and payroll policies and evaluate what employees actually do on a day-to-day basis as opposed to what their job description says.

**We are experienced, proactive and aggressive legal counsel providing superior service in all areas of employment law. If you would like further information regarding the issues raised in this newsletter or any other employment related issues, please contact Heather G. Ptasznik at (313) 259-8586 or John T. Below at (313) 259-8597. For more information about Kotz Sangster, please visit us at [www.kotzsangster.com](http://www.kotzsangster.com). This newsletter is provided as general information service and should not be construed as and does not contain legal advice on any specific matter, nor does this message create an attorney-client relationship.**