

Federal and State-by-State Guide to Overtime Law

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Overview

Overtime is one of the most confusing and controversial subjects for employers. The Department of Labor regularly investigates companies for violating wage and hour laws, and many are not aware that they are doing anything wrong. This can be a very costly problem to resolve.

This guide will take you through the basics of the federal overtime provisions, and give you a state by state overview.

Welcome to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) is not new. It was enacted in 1938 during the Great Depression. The FLSA covers two areas that affect all employers: minimum wage and overtime. In this guide we will focus on overtime.

The FLSA defines two types of employees, those that are non-exempt (employees that are covered by the FLSA), and exempt (those that are not).

Non-Exempt Employees and Overtime

Non-exempt employees must receive overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay.

Who are non-exempt employees?

- All employees other than those who qualify as exempt below.
- “Blue Collar” workers who do manual labor or who perform work involving repetitive operations with their hands, physical skill and energy.
- Police, fire fighters, paramedics and other first responders, no matter how much money they earn.

Exempt Employees

To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week.

Job titles do not determine exempt status. This is a very important point. Employers often make the mistake of thinking that they can decide whether or not an employee is exempt from the FLSA overtime provision based on job titles. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

Who are Exempt Employees?

- Executive
- Administrative
- Professional
- Outside sales employees
- Certain computer employees
- Highly compensated employees

The following section gives the details of the specific job duties and salary for each exempt group:

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;

- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;

- The employee's primary duty must consist of:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

State-by-State Overtime Standards

According to the FLSA, non-exempt employees must receive overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay.

Some states also have enacted their own overtime laws. Where an employee is subject to both the state and federal overtime laws, the employee is entitled to overtime according to the higher standard (i.e., the standard that will provide the higher rate of pay).

Premium Pay after Designated Hours

<u>State</u>	<u>Daily</u>	<u>Weekly</u>
ALABAMA	no state law; follows federal guidelines	
ALASKA	8	40
	<ul style="list-style-type: none"> • 10 hour day/40 hour workweek may be instituted with premium pay after 10 hours a day instead of after 8 hours. • The premium overtime pay requirement on either a daily or weekly basis is not applicable to employers of fewer than 4 employees. 	
ARIZONA	no state law; follows federal guidelines	
ARKANSAS	n/a	40
CALIFORNIA	8	40
	<ul style="list-style-type: none"> • Any work in excess of eight hours in one workday and any work in excess of 40 hours in one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be at the rate of one and one-half times the regular rate of pay. • Any work in excess of 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek shall be paid no less than twice the regular rate of pay. California Labor Code section 310. • Exceptions apply to an employee working pursuant to an alternative workweek adopted pursuant to applicable Labor Code sections and for time spent commuting. (See Labor Code sections 510 for exceptions). 	
COLORADO	12	40
	<ul style="list-style-type: none"> • Overtime provisions applicable to retail and service, commercial support service, food and beverage, and health and medical industries. 	

CONNECTICUT	40
<ul style="list-style-type: none"> In restaurants and hotel restaurants, for the 7th consecutive day of work, premium pay is required at time and one half the minimum rate. 	
DELAWARE	no state law; follows federal guidelines
DISTRICT OF COLUMBIA	40
FLORIDA	no state law; follows federal guidelines
GEORGIA	no state law; follows federal guidelines
HAWAII	40
<ul style="list-style-type: none"> An employee earning a guaranteed monthly compensation of \$2,000 or more is exempt from the State overtime law. 	
IDAHO	no state law; follows federal guidelines
ILLINOIS	40
INDIANA	40
IOWA	no state law; follows federal guidelines
KANSAS	46
<ul style="list-style-type: none"> Employees covered under the FLSA receive overtime after 40 hours in a week. 	
KENTUCKY	40
<ul style="list-style-type: none"> Premium pay on the seventh day for those employees who work seven days in any one workweek. Compensating time in lieu of overtime is allowed upon written request by an employee of any county, charter county, consolidated local government, or urban-county government, including an employee of a county-elected official. 	
LOUISIANA	no state law; follows federal guidelines
MAINE	40
MARYLAND	40
MASSACHUSETTS	40

MICHIGAN	40
MINNESOTA	48
	<ul style="list-style-type: none"> • Employees covered under the FLSA receive overtime after 40 hours in a week.
MISSISSIPPI	no state law; follows federal guidelines
MISSOURI	40
	<ul style="list-style-type: none"> • In addition to the exemption for federally covered employment, the law exempts, among others, employees of a retail or service business with gross annual sales or business done of less than \$500,000. • Premium pay required after 52 hours in seasonal amusement or recreation businesses.
MONTANA	40
NEBRASKA	no state law; follows federal guidelines
NEVADA	8 40
	<ul style="list-style-type: none"> • The premium overtime pay requirement on either a daily or weekly basis is not applicable to employees who are compensated at not less than one and one-half times the minimum rate or to employees of enterprises having a gross annual sales volume of less than \$250,000.
NEW HAMPSHIRE	40
NEW JERSEY	40
NEW MEXICO	40
NEW YORK	40
NORTH CAROLINA	40
	<ul style="list-style-type: none"> • Premium pay is required after 45 hours a week in seasonal amusements or recreational establishments.
NORTH DAKOTA	40
OHIO	40
OKLAHOMA	no state law; follows federal guidelines

OREGON		40
	<ul style="list-style-type: none"> Premium pay required after 10 hours a day in nonfarm canneries, driers, or packing plants and in mills, factories or manufacturing establishments (excluding sawmills, planing mills, shingle mills, and logging camps). 	
PENNSYLVANIA		40
PUERTO RICO	8	40
	<ul style="list-style-type: none"> Double time on statutory rest day Double time after 40 hours per week 	
RHODE ISLAND		40
	<ul style="list-style-type: none"> Time and one-half premium pay for work on Sundays and holidays in retail and certain other businesses is required under two laws that are separate from the minimum wage law. 	
SOUTH CAROLINA		no state law; follows federal guidelines
SOUTH DAKOTA		no state law; follows federal guidelines
TENNESSEE		no state law; follows federal guidelines
TEXAS		no state law; follows federal guidelines
UTAH		no state law; follows federal guidelines
VERMONT		40
	<ul style="list-style-type: none"> The State overtime pay provision has very limited application because it exempts numerous types of establishments, such as retail and service; seasonal amusement/recreation; hotels, motels, restaurants; and transportation employees to whom the Federal (FLSA) overtime provision does not apply. 	
VIRGINIA		no state law; follows federal guidelines
VIRGIN ISLANDS	8	40
	<ul style="list-style-type: none"> State law – overtime on 6th and 7th consecutive days. 	
WASHINGTON		40

- Premium pay not applicable to employees who request compensating time off in lieu of premium pay.

WEST VIRGINIA

40

WISCONSIN

40

WYOMING

no state law; follows federal guidelines

Disclaimer

This list is provided as information only; for your particular circumstances, please contact your state or federal Department of Labor, or consult with your attorney.

About Aspire HR Consulting LLC



Aspire HR Consulting LLC was founded in 2004 by Bill Gottlin.

Bill Gottlin has helped many small and mid-sized companies with their HR challenges. Bill understands the needs and issues of business owners to hire the right people, set company rules and policies and train managers to get the best results from their employees.

Prior to founding Aspire HR Consulting, Bill worked for over 20 years with companies in senior HR positions. He has handled every HR issue that companies face and is able to apply the “best practices” of large corporations to create solutions for smaller companies.

At Aspire, we are experts in developing HR solutions. We understand your HR challenges, give you personal attention and use best practices.

How We Help You

- Outsourced HR Department
- Employee Handbooks
- Company Policy Development
- Job Descriptions and Organizational Structure
- Training Managers to Interview, Hire, Discipline and Terminate Employees
- Mentoring Key Managers and Performance Evaluation
- Downloadable HR Publications to instantly give you the information you need to manage your staff

How We Work

We listen to your needs and issues and then develop an action plan to address your challenges. We assist you in three ways:

Outsourced HR Department

For an affordable monthly fee, Aspire becomes your HR Department. We handle recruiting, training, policy development, mentoring, employee evaluations, compensation and benefits consulting.

Stand-Alone Projects

On a project basis, Aspire provides advice and guidance on HR concerns such as hiring, terminating and managing sensitive issues, a fully customized employee handbook, company policies, training seminar, project, or recruiting.

Do-It-Yourself HR Publications

For those who need quick and useful HR information, Aspire HR Consulting provides downloadable guides and templates so you can take action fast. These include:

- Employee Handbook
- How to Find and Hire Great Employees for Your Business
- Effective Discipline and Termination Guide for Managers

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