

Exempt or Not Exempt?

Medical practices must be careful not to misclassify employees under the FLSA

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HOSPITALS and medical practices, like many employers, often get tripped up in properly classifying employees as exempt from federal overtime laws. Many employees, such as certain nurses or physician assistants, may fall within perceived grey areas of professional or administrative exceptions. Collective action lawsuits over such misclassifications are often very expensive and can result in significant settlements or judgments. For example, a recent lawsuit brought by nurses who claimed they were improperly classified as exempt resulted in a \$4.5 million settlement.

In addition, employers are required to keep accurate records of time actually worked. One significant issue with misclassification is that many employers who believed they have properly classified an employee as exempt from overtime, and later found out that the classification was incorrect, have not kept any records of actual time worked. The Fair Labor Standards Act (FLSA) requires that non-exempt employees be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. Therefore, it is critical that employers correctly classify employees when treating them as exempt.

Overview of the FLSA Exemptions

To be exempt, an employee must meet the “salary basis test” and meet the job duties of one or more exempt categories of employees. Some of the most common categories of exempt employees under the U.S. Department of Labor (DOL) regulations that implement the overtime rules set forth in the FLSA include employees classified as: (1) administrative; (2) professional; or (3) executive.

Section 13(a)(1) of the FLSA provides a specific exemption from overtime pay for employees who are employed as a bona fide executive, administrator, or professional. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer 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 (or \$23,660 per year). Job titles do not determine exempt status. In order for an exemption to apply, an employee’s specific job duties and salary must meet all the requirements of the DOL regulations.

Executive Exemption

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

- The employee must be compensated on a salary basis (as defined in the regulations) currently at a rate not less than \$455 per week (\$23,660 per year).
- 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.
- 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 Exemption

To qualify for the administrative employee exemption, the following conditions must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) currently at a rate not less than \$455 per week (\$23,660 per year).
- 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.
- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

For purposes of the administrative employee exemption, “primary duty” means the principal, main, major or most important duty that the employee performs. The term “matters of significance” refers to the level of importance or consequence of the work performed.

Professional Exemption

To qualify for the learned professional employee exemption, the following conditions must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) currently at a rate not less than \$455 per week (\$23,660 per year).
- 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 the consistent exercise of discretion and judgment.
- The advanced knowledge must be in a field of science or learning.
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Practice Wisely and Proactively

The determination of whether a particular employee is truly exempt from the FLSA’s overtime requirements requires a careful analysis of an employee’s actual job duties. If there are any doubts, an employer should consult with an employment law attorney before any issues arise. Practicing preventative care with respect to wage and hour issues in the workplace can mitigate or remedy potentially expensive problems in the future.

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