

That Can't Be Right! Federal Overtime Rules and Administration

“Oh, that just can't be right!” That's what I have heard over the past 20 years when I have talked about overtime. The Fair Labor Standards Act (FLSA), has been in effect for local governments in the United States since 1986. The problem is we all have our own interpretation of what causes overtime and who gets it. Some believe that it is governed by a labor contract or, by the NJ Civil Service Commission. This is incorrect. When I have tried to explain this, I get a resigned sigh and, “that just can't be right!”

Problem is, it's true. There is so much misunderstanding, I am hopeful that this article leads you onto evaluate your own organization and make changes before you get a visit from the US Department of Labor, Wage and Hour Division (WHD).

It all starts with your organization's determination if an employee is “exempt or non-exempt.” According to the WHD, “A job title alone is insufficient to establish the exempt status of an employee. Exempt or non-exempt status of a particular employee must be determined based on whether the employee's salary and duties meet the requirements of the regulations in this law.” In other words, however you have classified them, or the title given, you must review the actual work performed in order to properly classify the position (see 29 CFR part 541, Section 541.2, Job Titles Insufficient).

Exempt employees

Before everybody goes into panic mode, many municipalities can exempt half their workforce. Employees who are engaged in fire protection or law enforcement or emergency medical technicians are exempt. Typically, these employees are covered by labor agreements with specific requirements for overtime. Additionally, IT employees are exempt as well. This is a general

rule and is worth your time to verify the exemption. (While you're at it, make sure you're very familiar with the overtime rules in your labor agreements.)

The WHD conducts investigations for a variety of reasons to ensure compliance with the law. The WHD does not have to tell you why or give you a reason for their investigation.

Another class of employees that are exempt are the bona fide executive employees. This is where the most confusion comes in. Over the years, classification of employees has been distorted. It is very important that you examine all your management positions to ensure that the supervisory employees are truly performing exempt work. Management employees who direct the work of two or more other employees and have the authority to hire and fire employees are generally exempt. But do the work and review exactly what those employees do.

I do not attempt to give you the instructions to do the examination. I refer you to the US Department of Labor, Wage and Hour Division website: www.dol.gov/agencies/whd. If you do nothing else, look at this website and gather all the information you need to examine your organization.

Moreover, it is critical that you work with your labor attorney. At a minimum, have your attorney review your results.