

Are you eligible for overtime pay?

Changes in law not necessarily black and white

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If you work over 40 hours in a week, are you entitled to overtime pay (i.e. 1.5 times your normal pay rate)? With the recent changes to the Fair Labor Standards Act, the answer isn't as simple as it may appear.

First, if you're a teacher, you may as well stop reading this article and spend the time working on tomorrow's lesson plans. Teachers don't get overtime pay – ever. Teachers are (and always have been) exempt from overtime laws.

Why? No convincing official explanation has ever been provided by our federal legislators, but more likely than not they realized that the states would go bankrupt if they had to actually compensate teachers for all the time they put in beyond the standard 40 hour workweek.

Fair? No. But in any event, teachers fall under the “professional” exemption so long as they have the primary duty of teaching for an educational establishment. The regulations in this area have remained unchanged.

The Department of Labor has come up with a listing of the jobs that qualify for overtime. Unfortunately, the list doesn't contain easy equivalents for school district job categories.

Support employees, however, should read on.

There are basically three tests used to determine who is and who is not entitled to overtime pay. If you answer yes to all three questions set out below, you are considered “exempt,” meaning you don't get overtime. If you answer no to any of the following questions, you are likely entitled to overtime (though question three contains a huge amount of grey area):

- 1) Are you paid a monthly or annual salary rather than an hourly pay rate?
- 2) Are you paid more than \$23,660 per year in salary and benefits?
- 3) Are you performing “executive” or “professional” duties?

Now, for a bit of explanation.

The first prong has traditionally been referred to as the “salary basis” test, which means in order to be exempt an employee must be paid a salary rather than an hourly rate. This rule is the same today as it was before Congress started mucking about with the law.

The second prong, which is known as the “salary level” test, has been changed significantly. It used to be that employees earning less than \$8,060 per year were automatically entitled to overtime, regardless of how the other two tests came out. This number was tripled through the recent federal amendments to \$23,660. This means that employees earning under \$23,660 per year are almost always entitled to overtime pay for working more than 40 hours per week, regardless of whether they are paid a salary or how the third test comes out.

The final test is the one that has led to all of the confusion and is the main reason I’m prefacing my answers with “probably,” “more likely than not,” and other phrases meant to indicate that the law isn’t as clear as we had hoped.

It is known as the “duties” test and it uses the type of “duties” an employee performs to determine whether they are exempt or nonexempt. Employees who perform “professional” and “executive” duties are considered exempt, and all others are nonexempt (i.e. qualified for overtime pay), but who exactly qualifies as a professional or executive gets confusing.

For instance, a manager is considered exempt if he or she is involved in “key staffing decisions,” but how involved they need to be will likely depend on the facts of the particular case. While the Department of Labor has come up with a listing of the jobs that qualify for overtime, the list is too long to set out here, and unfortunately, the list doesn’t contain easy equivalents for school district job categories.

So, what is the bottom line answer to whether you are entitled to overtime? As with many legal questions, it depends. If you answered no to any one of the above three questions, there is a good chance you qualify, though how you come out on the duties test is going to depend largely on exactly what duties you are performing.

If you believe you should be receiving overtime pay and haven’t been, be sure to contact your regional OEA Advocacy Specialist.