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☰ Menu

- [Home](#)
- [About](#)
- [Cases](#)
- [Testimonials](#)
- [Areas of Practice](#)
 - [Litigation](#)
 - [Employment Lawyers](#)
 - [Business Disputes](#)
 - [Injunctions](#)
 - [Inheritance and Trustee Attorneys](#)
 - [Class Actions](#)
 - [Franchise](#)
 - [Intellectual Property](#)
 - [Defamation](#)
 - [Administrative Law](#)
 - [Business Law](#)
 - [Corporate Law](#)
 - [Employment Attorneys](#)
 - [Contracts](#)
 - [Intellectual Property](#)
- [Headlines](#)
- [Blog](#)
- [Contact](#)

Am I entitled to overtime?

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The Department of Labor issued new rules concerning whether employees get overtime pay. Many employees and employers think that if someone is paid a salary, they do not have the right to overtime. That is often wrong. Even if employees get a salary, they are often still entitled to overtime pay if they work more than 40 hours in a work-week. Here are some significant points from the new overtime rules that will help employers and employees figure out if they should be paid overtime:

1. Employees paid less than \$47,476 per year (or \$913 per week) generally are entitled to overtime pay. Even if they are classified as exempt, or paid a salary, they generally should get overtime. This rule goes into effect on December 1, 2016. (The old floor provided only that employees earn more than \$23,660). Notable, the amount will be updated every 3 years and, therefore, increase in the future. The Department of Labor has reported that the threshold is expected to rise to more than \$51,000 with the first update on January 1, 2020.
2. Many, but certainly not all, employees who make between \$47,476 and \$134,004 are still entitled to overtime. Employees performing primarily executive, administrative, or professional duties are exempt from overtime pay. Often, an employer will claim that an employee is “exempt” and does not get overtime pay. Just because the employer claims an exemption does not mean they get one. For example, an “executive secretary” who makes over \$50,000 per year might still be entitled to overtime pay even if he or she is classified as exempt. Whether an employee is really exempt depends on the nature of the work performed. Unfortunately, the new DOL guidelines were not very helpful in clarifying exempt vs. non-exempt employees and the impact on overtime. An overtime lawyer can help determine whether you are entitled to overtime pay by asking questions about your job duties.
3. It is important to note that the employer asserting an exemption from overtime pay for an employee bears the burden of proof. See *Idaho Sheet Metal Works, Inc. v. Wirtz*, 383 U.S. 190, (1966). Exemptions are to be narrowly construed, *Reich v. Wyoming*, 993 F.2d 739, 741 (10th Cir.1993), with their application limited to employees who are “plainly and unmistakably within their terms and spirit.” *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960); see also *Martin v. Cooper Elec. Supply Co.*, 940 F.2d 896, 900 (3d Cir.1991).

It is expected that many employers will not keep abreast, or will choose to ignore, the new overtime rules. Doing so, however, is dangerous as it can result in substantial overtime liability (including double damages), wage lawsuits, and overtime interest. (Note: Under Illinois overtime laws, an employee gets interest on unpaid overtime at a rate of 2% per month and under federal law an employee can recover double damages).

As such, many more employees are now entitled to get overtime pay under the new overtime rules. Consulting an overtime pay lawyer will help determine whether you get time and a half for overtime work.

It's only fair to share...  

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