

# Are You Paid A Salary? You May Still Be Entitled To Overtime Pay

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People who are paid a salary (as opposed to by the hour) are generally paid the same amount regardless of the number of hours they work. However, many “salaried” employees do not fully understand why they are paid a salary instead of by the hour with overtime – one-and-a-half times your regular hourly pay – for hours over 40 in a week. Employers do not always explain why someone is salaried and considered ineligible for overtime pay, and sometimes they get it wrong.

## **Who Is Entitled to Overtime? Which Jobs Are Not Entitled to Overtime? What Makes the Difference? How Can You Tell If You Might Be Entitled to Overtime?**

In general, your job title alone does not determine whether or not you should be paid overtime. Instead, what you actually do in your day-to-day job, your job duties and responsibilities, is what matters and decides whether you are entitled to overtime.

There are several specific categories of employees who are not entitled to overtime pay under the [Fair Labor Standards Act \(FLSA\)](#), which is the main federal law on how employees must be paid. Two of the most commonly challenged categories are the “Executive” and “Administrative” exemptions. There also are categories for “Professional” employees, certain computer technology employees, sales employees who work outside the office, and others.

In general, factors such as how much supervision an employee is under, whether the employee supervises others or runs a department, how much education and/or training is needed for the job, and how much an employee is paid are considered when determining whether an employee must be paid overtime.

### **Managers and Supervisors Must Actually Manage Others to Be Ineligible for Overtime**

Simply because someone has the word “manager” or “supervisor” in his or her job title does not mean that the employee automatically is not entitled to overtime. Certain managers or supervisors, such as some “assistant” or “associate” managers, may in fact be entitled to overtime pay if their job is not primarily devoted to actual management or supervision of others.

Employees who legally fall into the “Executive” (managerial/supervisory) exemption (and so are not entitled to overtime pay) will have a job that largely involves some combination of: managing a department or other group or function, managing two or more full-time employees (or the equivalent), and/or having the authority to hire or fire other employees (or to make hire/fire recommendations that are given strong weight). [See 29 C.F.R. § 541.100.](#)

True managerial employees who are not eligible for overtime would often, for example: interview, select, and train employees; set and adjust employees' pay and hours; give others orders regarding their work; evaluate other employees for promotions, etc.; handle employee complaints; discipline employees; make budgetary and resource allocation decisions; and monitor or implement legal compliance. [See 29 C.F.R. § 541.102](#). Where such duties are not a primary part of a person's job, it is possible the employee is entitled to overtime under the law.

### **Employers Sometimes Stretch the Real Meaning of the "Administrative" Overtime Exemption**

Employers also often use the "Administrative" employee exemption to deny overtime pay where they should not. This is sometimes because the definition of the "Administrative" category is somewhat confusing or vague, and therefore it is sometimes used as a kind of all-purpose exemption for employees who have any independence in how they do their job. However, there are several requirements that must be met for employees to properly fall into this category. Despite its name, clerical employees generally should not be denied overtime under the "Administrative" exemption unless they have very significant authority. An employee usually is only in a true "Administrative" job and not entitled to overtime when the employee's main job gives them authority to use independent judgment or discretion related to matters of great importance for the employer or its clients. [See 29 C.F.R. § 541.200](#).

In practical terms, overtime-exempt "Administrative" employees should have independent authority to develop, interpret or implement an employer's policies, plan business objectives, and/or carry out projects that have a significant impact on the employer's operations or finances. Because it can be unclear whether or not an employee has sufficient independence in how they carry out policy (rather than, say, operating within narrow guidelines), employees are sometimes inappropriately denied overtime under the "Administrative" exemption.

### **Will the Kinds of Employees Entitled to Overtime Pay Change with the New President?**

It is very difficult to say what the new presidential administration will do in this area. It is likely that the new administration will scrap or cut back new overtime rules put in place by the Obama administration (although the Obama rules have not gone into effect because they have been blocked by a court order). If the Obama rules had gone into effect, overtime would be required to be paid to almost any employee who makes less than \$47,476 per year. The current rule requires overtime for those making less than \$23,660, which is a threshold set during the George W. Bush administration.

Alexander Acosta, the current nominee for U.S. Secretary of Labor, said at [a recent confirmation hearing](#) that the proposed but blocked Obama rules were too aggressive and costly. However, Mr. Acosta did note that the rules' overtime pay threshold had not been updated since 2004, and that since the cost of living does rise as years pass, an adjustment for inflation to around \$33,000 might be appropriate.

Wigdor LLP has extensive experience representing both employees and employers regarding wage and hour compliance and violations. If you have any questions, concerns or doubts about whether you are being paid properly or may be entitled to overtime pay, consult with an attorney or the U.S. Department of Labor or New York State Department of Labor. The attorneys and staff at Wigdor LLP would be happy to



talk with you about your rights and any questions you may have.

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