# OVERTIME EXEMPTIONS IN HIGHER EDUCATION





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#### **Overtime - Basics**



- What is overtime pay?
  - Compensation at one and one-half times an employee's normal hourly rate for any hours above forty worked in a workweek.
- Who is entitled to overtime pay?
  - Under the Fair Labor Standards Act, every worker is entitled to overtime, UNLESS an exemption applies.
- The most common exemptions usually called the "white collar" exemptions are for *executive*, administrative and professional ("EAP") employees.

# Overtime - White Collar ("EAP") Exemptions



To be exempt, an employee must satisfy three tests: the "salary basis" test, the "salary level" test, and a "duties test."

■ It is NOT the case that any employee paid "on salary" is automatically exempt – i.e., not entitled to overtime pay.

### **Salary Basis Test**



• The individual must be paid on a salary basis – i.e., the employee receives a predetermined amount of compensation on a weekly, or less frequent, basis, which cannot be reduced based on the quality or quantity of the employee's work.

Subject to very limited exceptions, an employee must be paid in full for any week in which s/he performs any work.

## Salary Level Test



- An exempt employee must receive a salary at a rate of at least \$455 per week (under federal law).
  - -In Connecticut, the threshold level is \$475/week.

• Note: the USDOL is considering revisions to the regulations governing the EAP exemptions, including the threshold salary level. Until the Department issues its final rule, it will continue to enforce the \$455/week threshold.

# The Duties Tests - Executive Employees



- The employee's primary duty is managing the enterprise, or a recognized division of the enterprise.
- The employee supervises at least two full-timeequivalents.
- The employee has authority to hire and fire, or his/her opinions are given great weight in the process.

# The Duties Tests – Administrative Employees



- The employee's primary duty is office or nonmanual work directly related to 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.
- In higher education, employees such as admissions counselors or student financial aid officers might qualify under this exemption.

## Academic Administrative Employees



- In an educational establishment, employees performing academic administrative functions directly related to academic instruction or training may qualify for this exemption.
- Examples of such employees generally include department heads, academic counselors and advisors, and "intervention specialists who are available to respond to student academic issues."

# The Duties Tests - Professional Exemption



- For "learned professionals," the primary duty is the performance of work requiring advanced knowledge in a field of science or learning, predominantly intellectual and including the consistent exercise of discretion and judgment.
- The job requires advanced knowledge customarily acquired by a prolonged course of specialized intellectual instruction.
- For "creative professionals," the work requires invention, imagination, originality, or talent in a recognized field of creative or artistic endeavor.

# "Learned Professionals" in Higher Education



- Apart from teachers, learned professionals in higher education might include:
  - -Psychologists
  - Certified athletic trainers
  - Librarians
  - -Postdoctoral fellows
  - -In-house counsel
  - -CPAs

#### Teachers as Exempt Professionals



- Teachers are exempt if their primary duty is teaching, tutoring, instructing, or lecturing to impart knowledge.
- If this duty requirement is met, the salary level and salary basis tests do not apply.
- Professors, instructors, and adjunct professors typically qualify for this exemption.
- Faculty members who teach on-line or remotely may qualify.
- A teacher who spends a considerable amount of time in extracurricular activities (coaching, supervising student organizations) may qualify, provided that teaching is the primary duty.

#### **Coaches**



- A coach whose primary duty is instructing student-athletes in how to perform their sport may qualify for the teacher exemption.
- A coach whose primary duties involve recruiting or other non-instructional functions will not qualify.
- "The amount of time the coach spends instructing studentathletes in a team sport is relevant, but not the exclusive factor, in determining the coach's exempt status."

#### **Students**



- Most student-employees are hourly non-exempt workers.
- *Graduate Teaching Assistants* may qualify under the teacher exemption if teaching is their primary duty.
- *Research Assistants* who work under faculty supervision while obtaining a degree are not considered employees by the DOL.
- Student Residential Assistants are also not considered employees by the DOL (at least where their compensation is in the form of reduced room or board charges, or tuition credits).

#### Other FLSA Exemptions: Highly Compensated Employees



- Not recognized under Connecticut law.
- Under federal law, employees who customarily and regularly perform at least one of the duties of an exempt executive, administrative, or professional employee, AND
- who are paid total annual compensation of at least \$100,000, at least \$455 per week of which must be paid on a salary or fee basis (and the remainder of which may be paid through a combination of nondiscretionary bonuses, commissions, and other forms of nondiscretionary deferred compensation) are exempt from overtime pay requirements.

## Other FLSA Exemptions: Computer Employees



- Not recognized under Connecticut law.
- Earns at least \$455 per week on a salary or fee basis, OR
- If compensated on an hourly basis, earns at least \$27.63/hour;

#### **AND**

 Is employed as a computer systems analyst, programmer, software engineer or other similarly skilled worker in the computer field;

#### AND

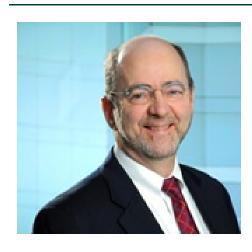
## Other FLSA Exemptions: Computer Employees



- Has primary duty consisting of:
  - Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; OR
  - Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; OR
  - Design, documentation, testing, creation or modification of computer programs related to machine operating systems; OR
  - A combination of the above duties, the performance of which requires the same level of skills.

#### **Contact Information**





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