



## **THE ADMINISTRATIVE OVERTIME EXEMPTION: THE EXEMPTION IS OFTEN MISUNDERSTOOD BUT HEAVILY RELIED UPON – CHAPTER THREE**

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July, 2016**

### **1. Introduction**

Under the Fair Labor Standards Act (“FLSA” or the “Act”), certain employees are exempt from the overtime requirements of the Act. The Act requires that an employee who works in excess of 40 hours during a seven-day workweek earn time and one half for all hours worked over 40, unless the employee falls within a statutory exemption. One of the exemptions most heavily relied upon by employers to justify an employee’s exempt status is the administrative overtime exemption. Failure to understand what is required to properly rely on this exemption results in many employees being misclassified, and ultimately, the employer is required to pay back wages for unpaid overtime. If you missed the previous articles that explained each exemption and the new salary requirements, see Chapters One and Two of this series of articles located at [www.saklaw.net](http://www.saklaw.net).

Beginning on December 1, 2016, the minimum salary required for the FLSA white-collar exemptions, which includes the administrative exemption, will increase from \$455 to \$913 per week (from (\$23,660 to \$47,476 calculated yearly). Any employee designated as overtime exempt as an administrator, but who is currently earning less than \$913 per week, must be given an increase on December 1, 2016 to meet the new salary requirement. In addition to the salary requirement, the administrative exemption requires that the employee meet a “duties test” that is very specific.

### **2. The Administrative Exemption**

The administrative exemption requires that the employee’s “primary duty” be (a) the performance of non-manual office work directly related to the management or general business operations of the employer or its customers; and (2) the primary duty includes the exercise of discretion and independent judgment regarding matters of significance. 29 C.F.R. § 541.200, §541.201. The definition itself appears broad in nature, which leads many employers to categorize employees who are not supervisors, but who have administrative duties, as exempt from overtime. However, the exemption requires that at least fifty percent of the employee’s time be dedicated to a fairly high level of discretion with respect to the management or general business operations of the company. Thus, many administrative employees will not qualify for the exemption and will be entitled to overtime pay. Moreover, overtime exemptions are construed narrowly, which means that any doubt about whether the exemption applies will tip the scales in favor of the employee.

### **3. What is Independent Judgment**

The FLSA regulations explain that the type of work related to the management or general business operations includes, but is not limited to, functions such as: tax (ex; CPA); finance; accounting; auditing budgeting; insurance; quality control; health and safety; benefits; labor relationships (ex: human resources director); regulatory and /or legal compliance; marketing and advertising, and similar types of activities. 29 C.F.R. §541.201(b). An important distinction is that the employee

must assist with running the company (management or operations), but cannot be an administrative assistant taking directions from higher levels of management.

Independent judgment means free from immediate supervision or control, which requires that the employee formulate, interpret and implement policy. Independent judgment is defined as making decisions on how the company will achieve certain goals associated with the particular position. An employee with the title of marketing director, who decides how the company will market its business and how and where the business will advertise its services or products, may be exempt. In the alternative, an employee who simply carries out the directives of higher management to achieve those marketing objectives will likely not be eligible for the exemption, and entitled to overtime.

*Please note that the information contained in this article is not designed to address specific situations, and does not include rules or regulations that apply to all states. If you have questions concerning this topic, you should consult with legal counsel of your choice to obtain advice on various fact specific matters.*

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