

## **Federal, state statutes determine employee overtime rules**

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This past week a client asked me to research whether the company needed to pay overtime to certain employees. If an employee is paid hourly, the employee is paid one and one-half times the hourly rate for any time more than 40 hours per week. However, some employers are able to avoid paying overtime to salaried employees who are exempt from the overtime laws.

Overtime pay is covered by two laws. The Fair Labor Standards Act of 1938 is the federal minimum wage law. It is also the federal law that requires employers to pay overtime. With respect to overtime pay, the FLSA created categories of employees known as "exempt" and "non-exempt." "Exempt" employees are exempt from all minimum wage and overtime provisions of the FLSA, including record keeping requirements. "Non-exempt" employees are entitled to overtime pay.

In general, certain professional, executive and administrative workers are exempt from the overtime provisions as well as certain listed professions. Qualifying employees as "professional, executive and administrative" workers can be a chore given the large amount of regulations on the subject. The federal department of labor Web site has a good deal of information regarding exempt employees at [www.dol.gov](http://www.dol.gov). However, the fact sheets related to overtime exemptions on the Web site cannot be relied on because of the second law regulating overtime pay.

The second law regulating overtime pay is the Illinois Wage Payment and Collection Act. The FLSA sets minimum standards; however, if Illinois has stricter standards than the FLSA, then the Illinois standards need to be met. The act applies to all employers and employees.

For the most part, the act adopts the FLSA requirements related to overtime pay. However, Illinois broke away from the federal standards in 2004. In 2004, the FLSA changed some of the exemptions and broadened the definition of exempt employees in some areas; however, Illinois did not follow suit.

Illinois allows an employee to be an exempt employee only if the employee would have been exempt under the 2003 federal regulations. Therefore, when determining whether an Illinois employee is exempt from overtime pay, one needs to look at the federal regulations that existed in 2003.

For example, a business may have some employees that would be exempt under the 2008 federal regulations; but because Illinois looks back to 2003, the employees are not exempt and must receive overtime pay. Therefore be careful if looking at the federal Web site to make sure you are looking at the proper form of regulations.

There are a few other misconceptions related to time worked which should be cleared up. First, double time pay is not required to be paid by the FLSA. Second, there is no limit as to the number of hours per day or per week that an employee can work under the FLSA. Finally, there is no such thing as "comp time" in the private sector, and this term should be avoided. For example, if a person works 41 hours in one week, an employer cannot avoid overtime by having the employee work 39 hours the next week.

This is a very general overview of overtime pay. Each situation is unique. If there is a question as to whether an employee is exempt or non-exempt from the overtime pay requirements, the first step should be to either call an attorney or the Illinois Department of Labor. The Illinois Department of Labor Web site is at [www.state.il.us/agency/idol](http://www.state.il.us/agency/idol).

*Markus May lives in Naperville and practices law with Eckhart Kolak in Chicago. He can be contacted at 312-236-0646 or [mmay@illinois-business-lawyer.com](mailto:mmay@illinois-business-lawyer.com).*