



Exempt v. Non-Exempt Employee Status

When was the last time you reviewed your business' employee compensation plan to consider the exempt or non-exempt status of your employees?

Generally employees are entitled to overtime pay when working more than 40 hours a week. However, if the employee can be designated as "exempt," the employee is not entitled to overtime.

Overtime laws exist at both the state and federal level. Federal law is codified in the Fair Labor Standards Act (FLSA), which was first enacted in 1938, and has been amended numerous times since. There are two tests under the FLSA to determine whether an employee is exempt from overtime: the salary basis test and the duties test. The salary basis test is just what you might expect it to be – the employee is paid by salary, not by the hour. Additionally, the employee cannot be subject to variations of pay based upon either quality or quantity of work. The duties test is much more complicated – employees who perform certain duties for their employer, regardless of how they are paid, may be exempt from overtime. The four general types of duties recognized under the FLSA are: a) executive duties; b) administrative duties; c) professional duties; and d) computer duties. Executive duties include having the primary duty of managing the company, supervising other employees, having hiring and firing authority, and so forth. Administrative duties include non-manual labor whereby the employee exercises his or her own discretion and independent judgment on significant matters to the employer, has authority to formulate and implement management policies, has authority to bind the employer on financial and contractual matters, and so forth. Professional duties include those professions such as lawyers, doctors, accountants, engineers, whose occupations require special knowledge gained from a specific professional degree or professional training. Computer duties involve systems analysis, programming, and software engineering, whereby the employee is determining hardware, software, and other system requirements and implementation thereof. For all of these types of employees the salary must meet a minimum financial threshold to apply.

Further, there are state laws that also apply to any employer. Minnesota has a 48 hour threshold for overtime pay. Minnesota also has exceptions for certain health care employees, automobile salespersons and mechanics, and agricultural employees, amongst others. Wisconsin's statutes require that an employee shall not work for a period of time longer than what may be dangerous or prejudicial to the person's life, health, safety or welfare. Many states have their own provisions regarding overtime pay, and these statutes, along with the FLSA and other federal statutes, rules and regulations, are regularly in flux.

So what should you do? Determine in detail how your business compensates your employees and independent contractors. Then talk to your lawyer, to find out if your procedures are compliant with federal law and state law. At Libby Law Office, P.A., we would be happy to sit down with you and help advise and protect your business, review your current employment practices, make recommendations and advise your business, so that your business practices are up to date and compliant with the law.