

Keeping Up With HR Laws: Minimum Wage, Paid Sick Leave and Overtime Rules

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Program Overview

- The AZ Fair Wages and Healthy Families Act
 - Minimum wage provisions
 - “Earned paid sick time” provisions
- Recordkeeping and enforcement provisions
- Fair Labor Standards Act overtime rules
- Exempt vs. Non-exempt
- Practical tips for compliance

The Fair Wages and Healthy Families Act

- The Fair Wages and Healthy Families Act (a.k.a. Prop. 206) was a ballot initiative on the November 2016 Arizona ballot.
- Approved by over 58% of voters.
- Set a new state minimum wage effective **January 1, 2017.**
- Entitled employees accrued “earned paid sick time” beginning **July 1, 2017.**

Minimum Wage

Minimum Wage	Effective Date
\$10.00/hr	January 1, 2017
\$10.50/hr	January 1, 2018
\$11.00/hr	January 1, 2019
\$12.00/hr	January 1, 2020
Cost of living (CPI)	January 1, 2021 and thereafter

- “Tipped employees” exception: employees who regularly receive tips or gratuities may be paid up to \$3.00 less per hour than the minimum wage (\$7.00 per hour).
- Must receive at least minimum wage for all hours worked.

Earned Paid Sick Time: The Basics

- Effective July 1, 2017
- Employees accrue “earned paid sick time” at the rate of 1 hour earned for every 30 hours worked.
 - Full-time and part-time
 - Exempt and Non-exempt
 - Exempt employees are presumed to work 40 hours a week for accrual purposes, unless they work less during their normal work week.
- Number of employees makes a difference:
 - 15 or more employees: Max of **40 hours** accrued or used per year.
 - Fewer than 15 employees: Max of **24 hours** accrued or used per year.
 - For fluctuating numbers of employees: Employees accrue 40 hours if the employer “maintained 15 or more employees on the payroll for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding year.”

Earned Paid Sick Time: The Basics

- 90-day probationary period on use for new hires, but not on accrual.
- Carryover or Payout?
 - Subject to accrual limits, unused earned paid sick time rolls over; or
 - Employer may pay out unused earned paid sick time at the end of the year and “provide the employee with an amount of earned paid sick time that meets or exceeds the requirements of this article that is available for the employee’s immediate use at the beginning of the subsequent year;” or
 - The employer can “front load” paid sick leave at the beginning of the calendar year and unused paid sick time will not roll over.
- Does not have to be paid out at resignation/termination, but must be reinstated if employee is rehired within 9 months.

Earned Paid Sick Time: A Misnomer

- “Earned paid sick time” can be used for:
 - An employee’s mental or physical illness, injury, or health condition;
 - Care of a family member with a mental or physical illness, injury or health condition;
 - “Family member” is defined very broadly.
 - Various public health emergencies; and
 - Absence of an employee or family member “due to domestic violence, sexual violence, abuse or stalking.”
- Employer cannot request details of reasons for leave, and must keep any information learned confidential.
- Employer may request documentation if employee uses earned paid sick time for three or more consecutive work days. A doctor’s note is enough.

Recordkeeping/Notice Requirements

- Must post notice of rights under the Act.
- Must maintain payroll records showing the hours worked for each day worked, and the wages and earned paid sick time paid to all employees for a period of **four years**.
 - Rebuttable presumption of failure to pay if employer does not keep records.
 - ICA “may by regulation reduce or waive the recordkeeping and posting requirements herein for any categories of small employers whom it finds would be unreasonably burdened by such requirements.”

Retaliation/Discrimination

- Unlawful to retaliate or discriminate against an employee for his or her exercise of any right protected under the statute (including a request to use paid sick time).
- Presumption of retaliation if adverse action taken by employer within 90 days of employee exercising rights under the statute.
- “Clear and convincing evidence” to rebut the presumption of discrimination or retaliation.

Enforcement

- Private or public (ICA) enforcement action.
- Penalties:
 - For violation of recordkeeping, posting, or other requirements: \$250 dollars for a first violation; at least \$1,000 dollars for each subsequent or willful violation.
 - For failing to pay minimum wages or earned paid sick time: Balance of the wages or time owed, plus interest, and an additional amount equal to twice the underpaid wages or earned paid sick time (can be trebled).
 - For retaliation: “An amount sufficient to compensate the employee and deter future violations, but not less than \$150 for each day that the violation continued or until legal judgment is final.”

Fair Labor Standards Act

- The Fair Labor Standards Act (FLSA) requires employers to: (1) pay minimum wage, and (2) pay overtime to employees who work more than 40 hours in a work week
- Employees are classified as either “exempt” or “non-exempt” under the FLSA
- Why should employers care about this?
 - **Misclassification can be costly!**

Exempt v. Non-Exempt Employees

- What do we mean by “exempt” and “non-exempt”?
 - **Exempt** employees do not qualify for overtime and minimum wage
 - **Non-exempt** employees must receive minimum wage and overtime
- The **employer** decides whether an employee is exempt or non-exempt.

Misclassification can be Costly

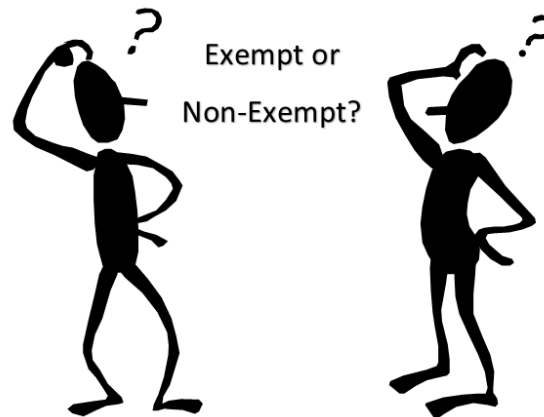
- Statutory Consequences:
 - Back wages
 - Unpaid overtime
 - Equal amount of back wages in liquidated damages
 - Potential civil monetary penalties
- Employer could face a lawsuit (\$\$\$)
- Harm to Employer's reputation

When Is an Employee “Exempt”?

- Look at salary (\$455/week or \$23,660/year) and actual job duties
- Exemptions include:
 1. Executive
 2. Administrative
 3. Professional (learned and creative)
 4. Outside Sales
 5. Computer / IT
- **Remember:** A job title alone is insufficient to establish the exempt status of an employee. It is the employee’s actual job duties that matter!

Ask the Audience!

- Bill works as the “stage manager” at a local theater company. He is paid an annual salary.
- True or False? Given his job title and the fact that he is salaried, Bill is automatically exempt from the FLSA’s wage and overtime provisions.



Executive Exemption

- To qualify for the executive exemption, the employee must:
 - Be compensated on a salary basis at a rate of not less than \$455/week (\$23,660/year)
 - Have a “primary duty” of managing the business, or a department or subdivision of the business
 - “Customarily and regularly” direct the work of at least two or more full-time (or equivalent) employees, and
 - Have authority to hire and fire, or the employee’s recommendations or suggestions regarding hiring and firing receive particular weight

Ask the Audience!

- Cindy is employed as the manager of Roll-A-Home RV Park in Mesa, AZ, and earns \$34,000 per year, significantly more than what any other park employee earns.
- Cindy is responsible for the day-to-day maintenance of the park's facilities and for maintaining supply and spare parts inventories. While on the job, she usually oversees the work of about 10 other employees, handles paperwork and accounting, interacts with customers, and sometimes performs manual labor to clean and maintain the park when needed. She is on-call 24/7. There is usually no other supervisor on-site who oversees her work. Exempt?
- Facts taken from *Baldwin v. Trailer Inns, Inc.* (9th Cir. 2001).

Administrative Exemption

- To qualify for the administrative exemption:
 - Compensation on a salary basis at a rate of not less than \$455/week
 - Primary duty is the “performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers,” and
 - Primary duty “includes the exercise of discretion and independent judgment with respect to matters of significance.”

Professional Exemptions

- To qualify for the **learned** professional exemption, the employee must:
 - Be compensated on a salary basis at a rate of not less than \$455/week
 - Primary duty must involve “performance of work requiring advanced knowledge,” defined as “work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment”
 - Have advanced knowledge in a field of science or learning, and
 - Have advanced knowledge customarily acquired by a prolonged course of specialized intellectual instruction.
- To qualify for the **creative** professional exemption, the employee must:
 - Be compensated on a salary basis at a rate not less than \$455/week, and
 - Primary duty must involve the “performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.”
- **Important Caveats:** Teachers and other employees holding a law or medical license are generally exempt if actually practicing in their respective professions. Salary basis requirements do not apply to these employees.

Outside Sales Exemption

- Salary basis requirement does **not** apply to this exemption!
- To qualify for the outside sales exemption:
 - The employee's primary duty must be making sales or obtaining orders or contracts for services, or for the use of facilities for which a consideration will be paid by the client or customer, and
 - The employee must be customarily and regularly engaged away from the employer's place or places of business.

Ask the Audience!

- Todd recently started work as a salesperson for Great Expectations, Inc. (“Great”), a start-up company that is selling what it claims to be the latest, greatest new weight loss product on the market (FDA approval pending, of course). Todd and Great agree that Todd will be paid on a straight commission basis with no base salary.
- For three months, Todd puts in 60-hour weeks at the office, making sales calls exclusively from his office phone. Alas, Todd fails to make a single sale (or a single dollar).
- Todd becomes disenchanted and decides he’s had enough. Just before he storms out the door, however, he tells Great’s HR manager that he must be paid minimum wage and overtime for the work he put in. Is he right?

Computer/IT Exemption

- To qualify for the computer/IT exemption, the employee must:
 - Be compensated on a salary basis at a rate of not less than \$455/week **or** \$27.63/hour, if paid on an hourly basis.
 - Be employed as a computer systems analyst, computer programmer, software engineer, or other similar worker primarily performing:
 - at least one of these duties:
 - Apply systems analysis techniques
 - Design, develop, document, analyze, create, test, or modify computer systems or programs, or
 - Design, document, test, create, or modify computer programs.
- **Important Caveats:**
 - Employees who manufacture or repair hardware do not qualify for the exemption.
 - Employees who depend on computers (e.g., engineers or CAD drafters) but who aren't regular programmers or analysts also do not qualify.

You May Remember...



- Proposed an increase in the salary threshold from \$23,661 to \$47,476 in 2016, but...

What happens now?

Obama's overtime rule struck down; Trump's Department of Labor starts over



Round Two: Salary Threshold Increase

- The Trump Department of Labor is currently revising the regulations governing exempt employees.
- Some speculate this could mean a salary increase (very likely more modest than what the Obama Administration proposed), but until the Department issues its final rules, the salary threshold for exempt employees remains \$455/week.

To Sum Up:

- FLSA exemptions are generally determined by an employee's **salary** and **job duties** – titles do not matter!
- An employee **must** qualify for an exemption in order to not be subject to overtime and minimum wage provisions.
- Whether an employee qualifies for an exemption is totally fact-dependent, so regular audits are essential.

Best Practices for 2019 and Beyond

- Abide by salary rules for exempt employees.
- Ensure accurate payroll recordkeeping procedures are in place.
- Review exempt classifications annually to make sure employee is still exempt.
- When in doubt, consult experienced employment lawyers (like us!).
- Watch out for new DOL regulations!

Practical Compliance Tips

- Questions or comments?
- Discussion of practical tips for compliance