



Coffee Club

Let's Review the DOL
Regulations Regarding Overtime
Exemption



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Introduction

Welcome to the AALRR monthly "Coffee Club" Webinar Series. Our series will focus on labor and employment law issues facing California employers and will provide you with a unique understanding and perspective on a variety of interesting and timely topics.

Join us the first Tuesday of every month @ 10:00 am for a new and exciting topic.

Today, we will be discussing *Let's Review the DOL Regulations Regarding Overtime Exemptions*


Next Month, Bunny Slippers & Fluffy Robes...*successful operations of your remote workforce*




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Agenda

- FLSA Basics
- Overtime Exemptions



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Wage & Hour



- Overtime and minimum wage requirements under federal, California, and local laws

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Fair Labor Standards Act

- Federal law
 - Minimum Wage
 - \$7.25 per hour
 - Overtime
 - One-and-one-half times regular rate of pay over 40 in workweek.
 - Exempt/Non-Exempt Employees
 - Exempt employees do not receive overtime pay (are exempt from federal overtime) where minimum salary level and duties tests are satisfied
 - Non-exempt employees (hourly or salaried) must be paid overtime

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California Law


- Minimum Wage
 - The California minimum wage is currently \$10.00 per hour
 - Increases to \$10.50 – 1/1/2017
 - Also impacts exempt employees



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California Law


- Overtime
 - Daily - over eight (8) in a workday,
 - 40 in the workweek, and
 - First eight (8) hours on 7th consecutive day of work in a workweek



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California Law

- Double-time
 - All hours over 12 in a workday, and
 - Over 8 on 7th consecutive day of work in the workweek
- Exempt/Non-Exempt Employees
 - Higher minimum salary level than FLSA
 - Duties test more narrow



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Municipal Minimum Wage Laws

- Location, location, location...
 - Oakland
 - San Diego
 - San Francisco
 - Berkeley
 - Los Angeles
 - El Centro
 - Emeryville
 - Sunnyvale
 - Long Beach
 - Mountain View
 - Pasadena
 - Richmond
 - San Jose
 - Santa Clara
 - Santa Monica


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Exemptions



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Exempt vs. Non-Exempt Classification



- Certain employees can be classified as exempt from overtime
- Three Tests for Exemption
 1. Duties – “primarily” exempt work
 2. Salary Level – minimum salary threshold
 3. Salary Basis – paid on salary basis

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White Collar Exemptions



- Administrative
 - Office/non-manual
- Executive
 - Management; Customarily/regularly directs two or more employees; Authority to hire/fire
- Professional (learned, creative)
 - Advanced knowledge work
 - Job performance requires invention, imagination, etc.
- Outside Sales
- Certain computer employees

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Salary Basis

- **California:** A monthly salary that is not less than two (2) times the state minimum wage for full-time employment.
 - Full time employment is defined as 40 hours per week
 - Currently \$41,600 annually as of January 1, 2016
 - Increases to \$43,680 annually as of January 1, 2017
- **Federal:** Currently not less than \$455 per week (\$23,660 annually)
- Increases to \$913 per week (\$47,476 annually) on December 1, 2016

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“White Collar Exemptions”

- California law and the FLSA provide an exemption from overtime pay for following employees:
 - Executive
 - Administrative
 - Professional
 - Outside sales employees
- Paid on a salary basis
- Meet minimum salary threshold

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Executive Exemption

- Duties and responsibilities involve the management of the enterprise or of a customarily recognized department or subdivision;
- Customarily and regularly directs the work of two or more other employees;
- Authority to hire or fire other employees or whose suggestions and recommendations as to hiring, firing, advancement, promotion or other change of status of other employees are given particular weight; and
- Primarily engaged in exempt duties.

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Administrative Exemption

- Duties and responsibilities involve the performance of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers;
- Exercises discretion and independent judgment with respect to "matters of significance";
- Regularly and directly assists a proprietor, or a bona fide executive or administrative exempt employee or performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge or executes under only general supervision special assignments and tasks; and
- Primarily engaged in exempt duties.

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Professional Exemption

- Licensed or certified by the State of California and is primarily engaged in the practice of one of the following:
 - Law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting
- Primarily engaged in an occupation commonly recognized as a learned or artistic profession requiring imagination, invention, or consistent exercise of discretion and judgment;
- Advanced degree acquired by prolonged intellectual instruction

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Outside Sales Employees

- Primary duty must be making sales, or obtaining orders or contracts for which consideration will be paid by the client or customer
- Employee must be customarily and regularly engaged away from employer's place of business
- Promotional Work – main subject of litigation
 - Whether it is exempt depends on whether it: (1) relates to sales made, or to be made, by someone else; or (2) is incidental to and in conjunction with an employee's own outside sales

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Determine the Exemption

Job titles alone do not determine.	Exemption requirements are narrowly construed and limited. <i>Nordquist v. McGraw-Hill Broadcasting Co.</i> (1995) 32 Cal.App.4th 555	Employer bears the burden of proof. <i>Coming Glass Works v. Brennan</i> (1974) 417 U.S. 188
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DOL- FLSA Overtime Security Advisor
(Web-based evaluation tool)

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Thank You

For questions or comments, please contact:

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