



News from the Hill

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Overtime Law Overhaul Establishes Clearer Guidelines for Employers

Are you in compliance with U.S. labor laws? As *Avionics News* goes to press, brand new Fair Labor regulations are being implemented that will affect the way that businesses pay overtime to their employees. While clearer guidelines are in everyone's best interest for compliance, they also eliminate any excuse that an employer might have about failure to comply because of lack of clarity.

The Fair Labor Standards Act (FLSA) guarantees that American workers will be paid at least the minimum wage (currently \$5.15 per hour). More importantly, it also states that employees who work more than 40 hours per week are entitled to time-and-a-half for hours beyond 40: 150 percent of their normal hourly wage. These represent minimum standards—employers are permitted to pay their employees more than minimum wage and they are permitted to pay overtime even when overtime is not required by the law (or even to pay more than time-and-a-half for overtime).

The thing that complicates this analysis is that certain employees are exempt from FLSA—meaning that they are not subject to its protections. The most important aspect of FLSA that applies to most employees (but not to exempt employees) is the over-

time provision. The need to pay time-and-a-half to covered employees has made it important to some employers to define who is covered and who is not.

FLSA has always been difficult to interpret for some employees, and it had standards that were outdated. To correct these deficiencies, the Department of Labor has given FLSA a brand new set of regulations (Washington, D.C.'s version of a new coat of paint).

The new regulations are designed to make it much easier for employers to know which of their employees are covered and which ones are exempt.

Salary Tests

The first step under the new regulations is to apply a salary test. If the employee is paid on a salary basis and paid less than \$455 per week (\$23,660 per year), then the employee is always covered by FLSA and thus always entitled to overtime pay for hours worked over 40 during a week. This is a significant increase from the outdated standard, which guaranteed FLA protection to those making less than \$155 per week (\$8,060 per year). For AEA members, this means that all employees paid a salary less than \$23,660 per year are entitled to overtime pay where appropriate.

There is also a highly-compensated employee rule, that states that employees paid \$100,000 or more are considered "highly compensated" and are not covered under FLSA. Thus, the employer does not have to pay time-and-a-half for hours worked over 40 by a highly-compensated employee.

If your employee makes between \$23,660 and \$100,000 in salary, then the employee will generally be covered under FLSA (and entitled to overtime pay) unless the employee fits into one of the exceptions. For AEA members, the most important exceptions are those that apply to:

- Executive
- Administrative
- Professional
- Outside Sales Personnel
- Computer Programmers

Executive Employees are Exempt

Executive employees are employees who fall within the correct salary range (\$23,660 or more per year), and who meet three additional standards. First, the employee's primary duty must be managing the business, or managing a customarily recognized department or subdivision of the business. Second, the employee must customarily and regularly direct the work

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of at least two or more other full-time employees or their equivalent. Finally, the employee must have the authority to hire or fire other employees—this includes situations where the employee does not have this power directly, but the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight. Executive employees are exempt from FLSA and therefore FLSA does not protect their right to overtime pay.

Administrative Employees are Exempt

Administrative employees are employees who fall within the correct salary range (\$23,660 or more per year), and whose 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. An employee will only fall into this category if the employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. Thus, an office manager who was charged with significant discretion to accomplish staff management tasks might be considered an Administrative employee who was exempt from FLSA, but an administrative assistance who does not exercise discretion and independent judgment with respect to matters of significance would not be exempt under this provision.

Are Avionics Technicians Professionals?

Professionals are exempt from FLSA. Many in the industry have fought over whether aviation maintenance technicians should be considered 'professionals.' This raises a

question as to whether your avionics technicians are exempt from FLSA.

The Labor Department has made it clear that the "[P]rofessional exemption is available for lawyers, doctors and engineers, but not for skilled tradespersons, technicians, beauticians or licensed practical nurses, as none of these occupations require specialized academic training at the level intended by the regulations as a standard prerequisite for entrance into the profession."

Based on this language from the Federal Register, it seems clear that mechanics and technicians in our industry are generally covered by the protections of FLSA. Also, informal Labor Department guidance specifically targets avionics technicians as persons who are covered by the protections of FLSA.

Of course, those shops with salaried lawyers on staff should consider their lawyers to be exempt, and feel free to work them 24 hours a day with no fear of liability for additional overtime pay.

Outside Sales Personnel

Some AEA members employ outside sales personnel. These employees may be paid in creative ways, and oftentimes are charged with development of business from geographic locations in which the repair station is not located. A true outside salesperson is exempt from FLSA and therefore does not enjoy the protections of that Act. Because of this exemption, it is easy to pay outside sales personnel on commission without fear of violating FLSA because the employer did not monitor the employee's hours for compliance with overtime provisions or to assure that minimum wage was being paid.

An employee is considered to fall within the outside sales employee exemption if the employee's primary duty is making sales, or obtaining orders or contracts for services (like repair or inspection services).

Determination of an employee's primary duty is based on an assessment of all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Inherent in this element is that the client or customer will pay for the goods ordered (so someone who solicits for free services—like for a charity—is not considered an outside salesperson under this exemption). Promotional work, for example—like going from trade show to trade show to market the business—is not outside sales unless it is incidental to the business of obtaining orders. In addition, the outside salesperson must be customarily and regularly engaged away from the employer's place or places of business (so your telephone sales people in the next cubicle over are not considered 'outside sales').

Computer Programmers

If hardware is the body then software is the brains of avionics. Many of AEA's members (particularly our manufacturer members) employ computer programmers. A special provision applies to computer programmers.

If the programmer is compensated on a salary basis then the programmer's FLSA analysis is based on the \$455 per week figure used for all other employees; however if the programmer is compensated on an hourly basis, then the programmer will be considered automatically covered by FLSA if the programmer is paid at a rate less than \$27.63 an hour. Note that this amount translates to an annual wage of \$57,470.40 (assuming a 40 hour paid work week). Programmers paid by the hour who make at least \$27.63 an hour and make less than \$100,000 will still be subject to FLSA unless they meet one of the other exempt categories.

Conclusion

FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced in situations where they apply. Some states establish higher standards and AEA members should make sure that they comply with those laws as well. There is no impediment under the U.S. Code to an AEA member offering employees higher wages, shorter workweeks, or higher overtime premiums than provided under the FLSA. Note that collective bargaining agreements can limit an employer's rights to provide additional benefits. If you have specific questions about FLSA's impact on your business, you should contact an attorney with an understanding of Labor and Employment Law.

The new regulations became effective on August 23. Make sure you know which of your employees are covered and which ones are not! □