

ARCHDIOCESE OF CINCINNATI

OVERTIME REGULATIONS

Recently the Human Resources Office has received a number of questions from administrators, principals, and pastors regarding overtime regulations and how to determine which positions are exempt from the overtime regulations established by the Fair Labor Standards Act (FLSA). The best way to address these questions is to begin by listing positions that are clearly subject to the FLSA and its regulations: manual laborers and other "blue collar" workers who perform work involving repetitive operations with their hands and physical skills; employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, craftsmen, operating engineers, construction workers, and laborers. Similarly, non exempt from the FLSA are positions performing routine and repetitive work such as clerical, secretarial, food preparation, grounds maintenance, and custodial work. The above positions are clearly non exempt, and subject to recordkeeping and overtime requirements.

Exempt Positions

The FLSA provides some exemptions from the overtime pay requirements for "white collar" employees. "White collar employees" are generally exempt from the overtime regulations if they meet any one of the following three exemptions.

Executive Exemption: To qualify for the executive exemption, an employee must be paid a salary of \$455 per week or \$23,660 annually. An executive employee's primary duty must be managing the enterprise, department or subdivision of the enterprise. The employee must customarily and regularly direct the work of at least two other full-time employees or their equivalent and must have hiring and firing authority or recommending power as to hiring, firing, advancement or promotion. Management includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting employees' pay and hours of work; directing the work of employees; and handling employee complaints and grievances.

Administrative Exemption: To qualify for the administrative exemption, an employee must be paid a salary of \$455 per week and must have a primary duty of office or non-manual work related to management or general business operations. The employee must exercise discretion and independent judgment with respect to matters of significance. The administrative exemption duties test has been traditionally used to determine exempt status for high level non supervisory administrative and executive assistants. According to the regulations, work "directly related to management or general business operations" includes work in finance, accounting, auditing, purchasing, advertising, personnel management, human resources, employee benefits, labor relations, computer network, legal and regulatory compliance, and similar activities.

In general, the exercise of discretion and independent judgment involves the comparing and evaluating of possible courses of action and making a decision after various possibilities have been considered. The term implies that the employee has the authority to make independent choices, free from immediate direction or supervision.

These definitions and examples would tend to withhold exempt status from positions engaged in providing assistance to an administrator or executive. Legal interpretation received suggests that only the executive assistant to the business owner or a senior executive of the organization could be considered exempt under the administrative exemption.

Professional Exemption: To qualify for the professional exemption, an employee must be paid a salary of at least \$455 per week and the employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning which is predominantly intellectual in character and which includes work requiring the constant exercise of discretion and judgment. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. The salary test does not apply to teachers, doctors, or lawyers; they are exempt by reason of their job duties regardless of how much they earn.

Legal Requirements

In summary, the FLSA requires that positions not qualifying for exempt status must be paid 1.5 times the regular pay rate for hours worked in a week above 40 hours. In order to ensure proper payment of overtime, time sheets should be completed and retained for all non-exempt employees for a period of at least 3 years. Our legal counsel has advised the Archdiocese and its entities to discontinue calculating overtime using 80 hours over a two-week period as the upper limit beyond which time and one-half must be paid.

Taking paid time off during the following week of the same pay period is no longer an allowed way to compensate for extra hours worked in a previous week. Hence, the law requires that non exempt employees who work more than 40 hours in a work week receive time and one-half pay for extra hours worked. It is permissible, however, when an employee works extra hours during one or more days to provide time off during the same work week at straight time, as long as total hours actually worked do not exceed 40 in the week. For purposes of counting hours, holidays, vacation, sick leave, and other paid time off need not be counted toward hours worked in a week for calculating required overtime payments (e.g., whose total hours equaled 48 hours during a week but included 8 hours sick time is not entitled to any overtime pay).

The Human Resources Policy Guidelines for parishes and institutions on the Archdiocesan website describes overtime pay and time off provisions in a way that allowed taking time off in the following week of the same pay period. Since this practice is no longer permissible, we will soon be changing the language in the Human Resources Policy Guidelines.

This information is only meant to give you a broad overview of the FLSA regulations, you may obtain additional information on this subject from the Department of Labor's website, www.dol.gov or <http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm>.

Please do not hesitate to contact the Human Resources Office for further information or, if you have a specific question about the status of your employee(s).