

LAW OFFICES
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NEW OVERTIME LAWS IN ILLINOIS

New laws in Illinois could make violations of overtime statutes very costly for employers.

It is important for employers to understand which employees are exempt from overtime laws, and what conduct by the employer may invalidate an otherwise valid exemption. For example, there is a common misconception that if an employee is paid a salary, then he/she is exempt from overtime. This theory is absolutely wrong.

Generally, in Illinois, employees earning less than \$455/week or \$23,660/year, are entitled to overtime. For those earning more, certain employees may be exempt from overtime laws including, *under certain circumstances*: executives, professionals, computer professionals, outside sale employees, and administrative employees. Employers who systematically deduct pay for reasons deemed improper by the statute, however, may invalidate the exemption status of their employees.

In terms of legal action, employees may recover lost wages and damages either from a private civil action against the employer, including a class action where one aggrieved employee may bring suit on behalf of all affected employees, or as an action initiated by the Department of Labor. Employees entitled to recover are entitled to their unpaid overtime wages and potentially heavy penalties plus attorney's fees for each employee. An agreement between the employer and employee which contrary to the statutory guidelines is not enforceable and the employer may still be deemed liable.

EXEMPTIONS FOR EMPLOYEES

Generally speaking, "white collar" employees who earn more than \$455 a week or \$23,660 a year can be exempt. Specific examples of various occupation categories that are considered exempt:

Executives who:

- earn more than \$455 a week, and
- have a primary duty to manage the enterprise or a department or division of the enterprise, and
- regularly direct the work of 2 or more employees, and

Professionals who:

- earn more than \$455 a week, and
- have a primary duty requiring advanced knowledge which is intellectual in

- nature and involves work requiring judgment and discretion, and
- works in a field of science or learning which is customarily acquired by prolonged course of specialized intellectual instruction

Computer systems analysts, programmers, software engineers who:

- earn more than \$455 a week,
- have a primary duty to:
 - theoretical and practical application of highly specialized knowledge in computers, analysis, programming, and software requiring exercise of discretion and judgment

Administrative employees who:

- earn more than \$455 a week, and
- have a primary duty in performance of office work related to management of company, requiring exercise of discretion and judgment

Outside sales employees who:

- are exempt whose primary duty is regularly making sales, obtaining orders or contracts for services or for the use of facilities for consideration paid by client or customer, and
- employee is customarily engaged away from employer's place of business
- devotes no more than 20% of time on non-exempt tasks

The law contains other exemptions applicable to specific situations or industries. Should you have questions about specific situations please contact Lynam & Associates or other competent legal counsel for advice.

PAY DEDUCTIONS AND INVALIDATION

Employers who regularly deduct pay for absences, discipline, or "matters of practicality" may invalidate the exemption status of employees who are otherwise exempt. In determining if there has been such an "actual practice" of pay deductions, courts will examine:

- 1) the number of instances of improper deductions compared to total # of incidents of employee discipline
- 2) the time frame of deductions
- 3) the number and geographic location of managers who are deducting pay
- 4) the clarity of deduction policy
- 5) the exemptions that an employer offers employees under the employer's pay deduction system

Circumstances under which exemptions are valid under a pay deduction system

- when:

- pay deduction policy is clearly communicated and has a complaint mechanism,
- employer reimburses for improper deductions, and
- employer makes good faith effort to comply with exemption laws.

BUT

- if an employer willfully continues improper pay deductions after employee complaints, the exemptions are not allowed.

- exemptions are also allowed under pay deductions systems when:
 - deductions are isolated or inadvertent and
 - employees are reimbursed by employers for pay improperly deducted

Specific pay deductions which do not invalidate exemptions

- Deductions which:
 - are for absences of 1+ full days due to personal reasons other than illness or disability
 - are for absences of 1+ full days due to illness where there is a bona fide plan for such deductions
 - offset other jury duty or military service compensation
 - for penalties imposed in good faith for significant infractions of safety rules
 - are for unpaid disciplinary suspensions of 1+ full days, done in good faith, for conduct rule infractions (i.e. sexual harassment, violence)
 - are for the beginning/end week of work
 - are for unpaid leave under the Family and Medical Leave Act

LIABILITY

Violation of overtime rules may entitle employee to:

- unpaid wages for overtime work
- liquidated damages
- costs associated with collecting the overdue overtime wages
- attorney's fees

The Department of Labor may also fine the employer if the violation is found to be willful, repeated, or reckless.

Also, in Illinois, any employee denied overtime may sue on behalf of other employees who were wrongfully denied overtime pay. Those employees may only remove themselves from the suit by electing to "opt out" of the suit.

AVOIDING LIABILITY

Employers who are attentive and mindful of the details of these new overtime laws in Illinois can avoid the new stiff penalties associated with their violations. This includes:

- 1) Reviewing the exemption status of all employees under the new law
- 2) Having a clear overtime policy which is clearly communicated to employees
- 3) Strict oversight which avoids unauthorized overtime
- 4) Prompt response and remuneration for improper pay deductions