



# OVERTIME:

Are You Eligible Under Expanded Federal Regulations?

A White Paper Presented By

*LAW OFFICES OF*  
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## OVERTIME: Are You Eligible Under Expanded Federal Regulations?

Is the 9-5 job a thing of the past? In many industries it is. For salaried workers more hours are frequently required to complete heavier workloads. In recent years, lack of hiring and job consolidation have pushed additional duties onto those who remain.

In this “new normal” a recent change to federal rules may provide some relief. For many mid-level managers in retail and the food industry, entry-level accountants, call center managers, medical field and human resources administrative staff, a pay increase or reduction in hours will be coming.

### WHAT CHANGES AND HOW SOON?

If you receive a salary of less than \$47,476 a year (\$913 per week)<sup>1</sup> you could soon be entitled to overtime pay. The threshold increases from the minimal \$23,660 that was last adjusted in 2004.

The rule goes into effect on December 1, 2016. Updates will now be required every three years.

The final salary figure for exempt/salaried employees was actually lower than the proposed \$50,400. It was a compromise based on the 40th percentile for a full-time salaried worker in the lowest wage region of the country – which happened to be the South.

California labor laws have traditionally been more protective than federal ones. With the new threshold this changes. The minimum salary threshold in California is currently \$41,600, with an increase to \$43,680 on January 1, 2017. This amount is the equivalent of “two times the state minimum wage for full-time employment.”<sup>2</sup>

## WHO IS AFFECTED?

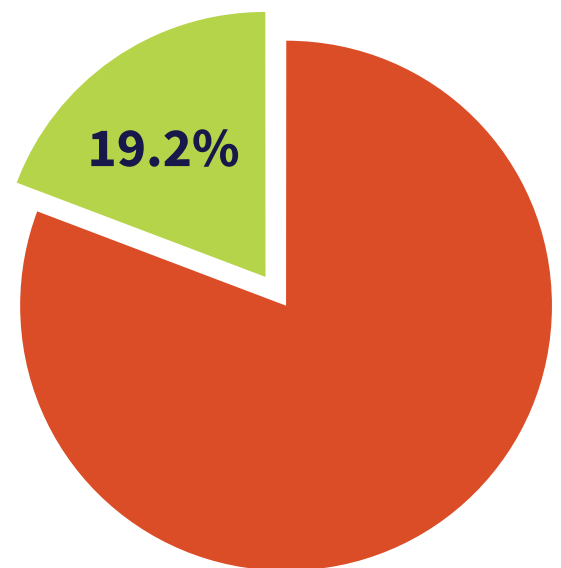
Nationally, it is projected that 4.23 million of more than 22 million exempt workers will be affected by the new rules.<sup>3</sup> In California the number is expected to be approximately 392,000.<sup>4</sup>

Slightly more women will be impacted by the rules – 56 percent. And those with four-year college degrees make up 53 percent of affected workers. Approximately 1.5 million of these workers have children under the age of 18. For families, the rules could translate into more family time or additional income to pay for expenses.

This breakdown shows the broad nature of the new rules. There is, however, more room for employers to make mistakes or retaliate against employees who ask about their rights.



## Percentage Of Salaried Workers Affected By New Rules



# WHAT ARE THE RULES USED TO DETERMINE IF A POSITION IS EXEMPT OR NON-EXEMPT?

Salary amount and job title alone are not enough to determine whether a position qualifies as exempt (meaning you are not paid overtime for the hours above-and-beyond 40 in a work week). To satisfy the white collar exemption, three general requirements exist:

1	A set salary that is not subject to the quality or quantity of work (salary basis test)
2	After December 1, 2016, a salary above the minimum salary level of \$47,476 per year or \$913 per week (salary level test)
3	Conditions in which the employee's primary job must include executive, administrative or professional kinds of work (standard duties test)



**The new rule does not change the job duty requirements. Here is a quick overview with examples of some positions that may be classified in the three categories:**



## PROFESSIONAL EXEMPTION

This category includes learned or creative professionals. The work usually requires an advanced degree or a combination of the following work requirements:

- Originality
- Imagination
- Invention
- Special artistic or creative talent

Teachers, lawyers and doctors are included in this category, but the salary level and basis tests generally **do not** apply to them.



## ADMINISTRATIVE EXEMPTION

Primary duties must relate to management or general business operations. If your position fits within this exemption, you have leeway to exercise independent decision-making over significant matters.

Broad fields that fall within this exception are:

- Marketing and advertising
- Human resources, employee benefits and personnel management
- Back-office quality control, purchasing and logistics
- Technology positions that maintain computer networks or internet and database administration

Those who advise or consult their employer's clients – i.e., tax and accounting experts and financial/insurance consultants – are often exempt under this category.



## EXECUTIVE EXEMPTION

If you manage a business or a department and routinely direct the work of at least two full-time equivalent employees, your position probably fits within this category. You also need to have authority over hiring, promoting or terminating employees.

## HOW DO BONUSES AND COMMISSIONS CALCULATE INTO THE SALARY-LEVEL TEST?

The federal regulations allow commissions or a bonus to make up 10 percent of a salary toward the threshold. California law does not allow an employer to take into account bonuses or commission payments to meet the threshold.

This means that your employer will need to pay you a salary of at least \$47,476 -- regardless of bonus or commission -- to avoid paying you for overtime hours.



## SALARY AND HOUR CONVERSATIONS WITH YOUR EMPLOYER

Employers have several options to come into compliance with the salary-level test over the coming months. These include:

- Increase salaries to maintain the exemption
- Pay the current salary with overtime after 40 hours of work each week
- Balance workloads to reduce hours
- Convert to hourly wages

**The Department of Labor (DOL) provides some helpful examples that may assist you in deciding whether it is time to raise this issue with your employer.**

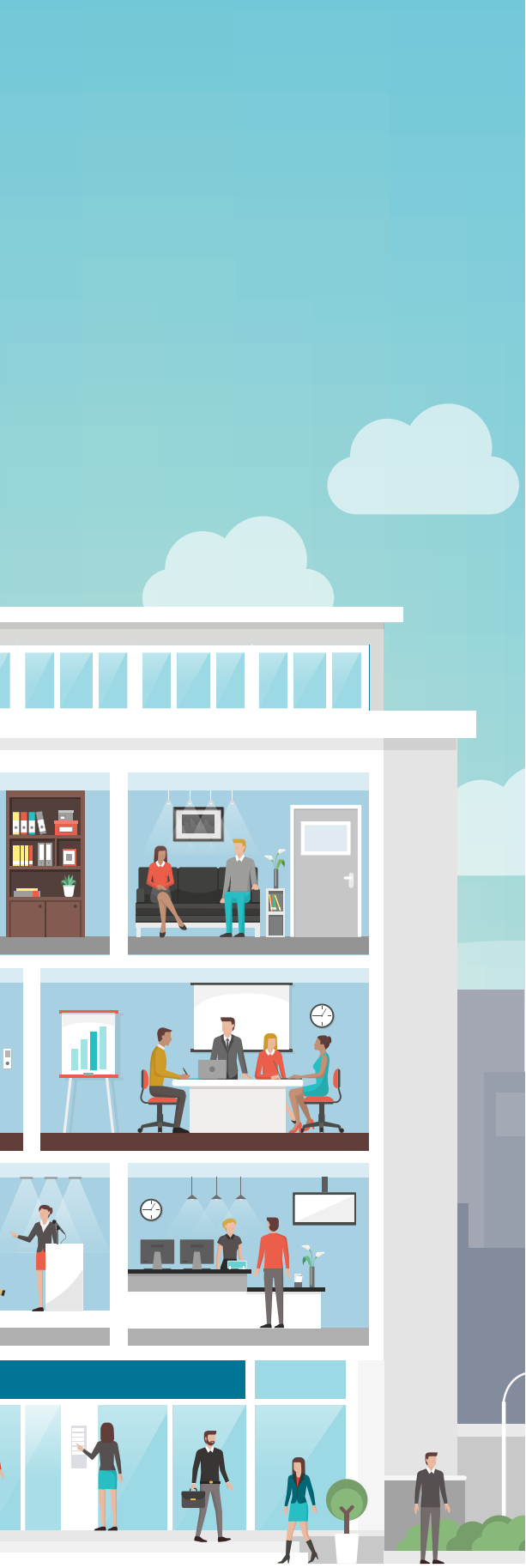
**EXAMPLE 1**

An office manager receives a fixed salary of \$42,000 per year. He works regular business hours and his job does not require overtime. The change in salary level would mean that he is no longer an exempt employee. But he is not impacted, because he does not work overtime.

**EXAMPLE 2**

A department manager at a big box retailer makes \$39,500 per year. She routinely has to put in 45 to 50 hours a week to finish her work. She does not meet the new salary level and is eligible for overtime. Her employer could increase her salary to the new threshold to maintain her exempt status. The other options are to pay the same salary with overtime each week or shift her to hourly.





## CAN YOU BE PUNISHED FOR RAISING SALARY ISSUES?

The short answer is no. If your employer does not take action on the new salary threshold, you should raise the issue.

The law prohibits employer retaliation, but that does not mean it never happens. Sometimes your employer might not know it is breaking the law by taking a negative employment action, such as demoting you or terminating your position. This does not matter. What are your options if your employer illegally retaliates against you, because you raised your right to overtime wages? You could bring a civil legal action. Remedies available include monetary compensation and potential reinstatement of employment.

## ISSUES TO WATCH FOR IF CONVERTED FROM SALARIED TO HOURLY

As the new rules go into effect, many employees will find they are eligible for overtime. This comes with different record-keeping requirements. But it also includes rest and meal breaks that you may have been skipping.



## Time-Keeping

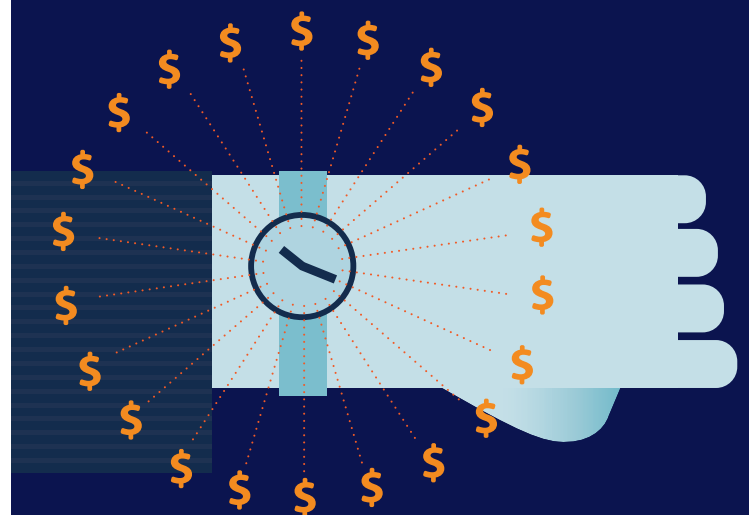
Your employer must have a procedure that allows you to track your hours. This does not need to be a punch clock on the wall. A software system that allows you to enter daily work hours is likely sufficient.

This may seem like a hassle at first. But it ensures you are paid one and one-half times your regular rate of pay when you work more than eight hours in a day (in California) or more than 40 hours in a workweek.

## Meal/Rest Breaks

Your employer needs to provide a 30-minute meal break when you work more than five hours in a day.<sup>5</sup> A 10-hour day would require two meal breaks. These breaks are not counted as work time and are unpaid. Unlike in the past as a salaried employee when you worked while eating, you must be relieved of work duties during this time. Your employer cannot change your status and then discourage you from taking meal breaks.

- ☑ For typical shifts that run between six and 10 hours, you should receive two, 10-minute rest breaks. These breaks count as time worked and you must be paid.
- ☑ Tied in with the time-keeping, your employer needs to offer some way for you to track meal breaks. Your employer cannot assume you are taking these breaks and subtract 30 minutes from your wages.
- ☑ If your employer discourages or refuses these breaks, it can be held liable. Over time the penalties may add up to one hour for each day a rest period was denied.<sup>6</sup> In these situations, you do need to take action. The amount of time you have to bring a claim is limited to three years.<sup>7</sup>



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### **TODD M. FRIEDMAN**

Founding partner of the  
Law Offices of Todd M. Friedman, P.C.

Putting in extra hours to do your job probably means that your job is more to you than solely a source of income. Similarly, employment law is not just my career – it is my passion. I focus on employment law, because I have faced the same issues and pressures myself.

Before my legal career, I worked in other fields and experienced hostile work environments created by abusive, temperamental bosses. I have experienced the stress that comes from an ever-increasing workload and more hours at the same salary. I understand the problems this creates both on and off the job – from difficulty paying the bills to less time to spend with your family.

I am dedicated to protecting your rights in the workplace. Since founding the Law Offices of Todd M. Friedman, P.C., I have been privileged to represent clients in a broad range of employment-related legal matters including retaliation claims and wage and hour violations. I have fought for my clients' legal rights and effectively restored the proper balance in employer-employee relationships.

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<sup>1</sup> Cal. Lab. Code § 2802(a)

<sup>2</sup> Cochran v. Schwan's Home Serv., Inc., B247160, 2014 WL 3965240 (Cal. Ct. App. Aug. 12, 2014)

<sup>3</sup> Stuart v. RadioShack Corp., 641 F. Supp. 2d 901 (N.D. Cal. 2009)

<sup>4</sup> Id.

<sup>5</sup> Cal. Lab. Code § 512

<sup>6</sup> Cal. Lab. Code § 226.7

<sup>7</sup> Murphy v. Kenneth Cole Prods., Inc., 40 Cal. 4th 1094, 155 P.3d 284 (2007)

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