

Overtime Exemptions from the Fair Labors Standards Act

The Fair Standards Act provides that employers subject to its provisions must pay its employees the specified minimum wage and overtime compensation. There are various exemptions from the Act, or portions of the Act, which are based on factors such as type of business activity, the amount of business and the particular job performed by an employee.

Small Dealer Exemption

Businesses with annual sales volume of less than \$500,000 are exempt from the minimum wage and overtime provisions. However, any business previously covered under the minimum wage law, but now exempt, must pay its employees at least \$5.15 an hour.

Farm Equipment Dealers' Overtime Exemption for Certain Salesmen, Partsmen and Mechanics

The Act provides an exemption from its overtime provisions for certain salesmen, partsmen and mechanics who are employees of dealers, primarily engaged in selling or servicing farm implements to ultimate consumers. The exemption applies if all of the following requirements are met:

1. The business is a non-manufacturing establishment that is primarily engaged in sales of automobiles, trucks or farm implements to ultimate consumers, i.e., more than 50% of its annual dollar volume is derived from sales of automobiles, trucks or farm implements to ultimate consumers.
2. The salesmen, partsmen and mechanics are primarily, i.e. spend over 50% of their time, in selling or servicing automobiles, trucks or farm implements to ultimate consumers.

Note: The overtime exemption is not dependent on the dealer's total sales volume.

Note: The overtime exemption is only available if the sale of farm implements, automobiles or trucks to ultimate consumers constitutes more than 50% of the dealer's annual dollar volume in sales. A dealer would not qualify for the exemption if more than 50% of its annual dollar volume in sales is derived from sales of non-farm equipment and machinery such as construction, utility, lawn & garden equipment not normally used in farm operations, or sales of parts, services and repairs.

A salesman, for purpose of the exemption, is an employee whose primary duty is to make sales or obtain orders for sale of automobiles, trucks or farm implements.

A partsman is an employee whose primary duty is to requisition, stock and dispense parts for automobiles, trucks or farm implements.

A mechanic is described as someone whose primary duty is to perform mechanical work on automobiles, trucks, trailers or farm implements in order to place them in proper operating condition. Note: The primary duty test with respect to salesmen, parts men and mechanics has been construed to mean that an employee must spend more than 50% of his time doing exempt task in order to qualify for the exemption. Examples of the work that have been held not to be mechanical work for the purpose of the primary duty test are: Washing, cleaning and polishing; Lubricating and packing bearings; Changing oil and oil filters; Changing tires; and Painting.

According to the Wages & Hour Division, employees not covered by the overtime exemption include service writers, service advisors and service managers who are not primarily engaged in mechanical work. However, a service manager may be exempt if he meets the conditions to qualify as an executive employee. Of course, coverage or exemption depends upon actual duties, not mere titles of positions. Note: The Wage & Hour Division has taken a position that “set-up men” are not included in the overtime exemption provisions applicable to mechanics. From my field experience, two other positions not qualifying for exemption are lawn & garden mechanics and truck drivers. Of course, whether or not an employee is a “set-up man” as opposed to a mechanic will depend not on the title or designation given to him by the employer, but rather on the nature of the work performed by that employee.

Exemptions from Overtime for Certain Commission Employees

The Act provides an exemption from its overtime requirements for certain commissioned employees. This exemption may apply to those employees who do not satisfy the salesmen, partsmen and mechanic exemption discussed above. The following conditions must be met:

1. The business establishment must be a “retail or service establishment”, i.e. at least 75 percent of the annual volume of sales of goods and services is not for resale and is recognized as retail sales in the industry; and
2. The employee’s regular rate of pay is in excess of one and one-half times the minimum hourly wage rate;
3. More than 50% of the employee’s compensation for a representative period (not less than one month) must represent commission on goods & services.

Note: Some dealerships have compensated mechanics on a basis of a “flat rate hour.” The Wage & Hour Division has considered such payments to represent “commissions on goods and services” under appropriate circumstances.

Executive, Administrative, Professional and Outside Sales Personnel Exemption from Minimum Wage and Overtime

These employees are exempt from the minimum wage and overtime provisions of the law, provided they meet the basic requirements. While there are minimum salary and other requirements as well, generally an executive employee’s primary duty must be the management of the enterprise, or a recognized department or subdivision, and must directly supervise two or more employees. An administrative employee also must meet a salary or fee test and other requirements, and must primarily perform responsible office or non-manual work directly related to management policies or general business operations of the company or its customers. A professional employee must primarily perform work requiring advanced knowledge in a field of science, learning or specialized study and also must meet a salary or fee test and other requirements.

An outside salesman must be employed to make sales away from the employer’s place of business, and he must regularly do this work, performing only a limited amount of work non-exempt work. There is no special minimum salary requirements for the outside salesman in order for the exemption to apply.

Note: Under Wage & Hour Division regulations, an employee does not qualify for the executive, administrative or professional exemption if that employee is paid on an hourly basis.

For additional information on minimum wages or overtime exemptions, please contact the Association office.