

Should You Receive Overtime Pay?



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When an employer tells an employee they are not entitled to overtime pay, employees often believe their employer is handling the issue properly. However, employers often times do not properly classify employees as exempt/non-exempt for overtime pay which can lead an employee to be underpaid for their work. The Commonwealth of Kentucky's statutory regulation KRS § 337.285 states that no employer shall employ an employee for more than 40 hours per week unless that employee receives a pay rate of no less than one and one-half times the hourly wage for the hours in excess of 40 hours. The regulations then go on to lay out the exemptions to the baseline rule. The following are exempt for the previously stated overtime regulation:

- Retail store employees engaged in selling, purchasing, and distributing goods
- Restaurant, hotel, and motel operation employees
- Employees providing 24 hour residential care on the employer's premises in a parental role to dependent, neglected, and abused children who are in the care of private non-profit child-caring facilities.¹
- Individuals other than family providing in-home services for the sick,

¹ These facilities must be licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670.

convalescing, and elderly

- Any employee who is subject to qualifications and hour maximums set by the Secretary of Transportation
- Persons employed as Seamen
- Salesman, partsman, or mechanics employed by a non-manufacturing establishment engaged primarily in selling or servicing automobiles and farm implements for the final purchasers of the automobile or implement.
- Taxicab Drivers

When it comes to overtime pay there is a common misconception that salaried workers are not entitled to overtime pay. Although this is often true, it is not a bright line rule and a deeper look into the regulations could reveal that you are entitled to overtime compensation even if your employer has previously treated you as an exempt employee. The Fair Labor Standards Act lists four categories of salaried employment as exempt from overtime pay. These categories include salaried employees who are members of a learned profession, creative employees, employees fulfilling executive duties, and employees handling administrative duties. If you work more than 80% of your work hours in a position that falls within the following exemptions then you are not entitled to overtime.

The learned profession exemption includes doctors, lawyers (not paralegals), dentists, teachers, architects, Registered Nurses, scientist (not technicians), pharmacists, actuaries, engineers, and some other learned professions. To fall under this exemption an advanced degree is often required.

The next category of salaried exemptions is the exemption for creative employees which includes musicians, composers, cartoonists, actors, writs, and some journalists. People who fall under this requirement do not always have to be paid salary to fulfill the exemption requirements.

An employee whose primary job is management and is the supervisor of a minimum of two employees (of which this employee has an input in the process of hiring, firing, and

promoting the subordinates) then the employee would be exempt from overtime pay under the executive duties exception.

The final category of salaried employee exemptions to overtime pay is the administrative duties exception. This exemption is not as clear cut as the previous. To fall within this exemption an employee's duties must be office or non-manual work which is directly related to the business operations and management with this employee's independent discretion and judgment about significant matters being required to fulfill the job duties.

Although there are these categories of overtime exemptions for salaried employees, there are also some additional factors to consider. An employee making less than \$455 per week (equaling \$23,600 annually) then that employee is never exempt. An employee whose pay is cut when they miss part of a work day is not exempt; however, paid time off may be deducted from a paid-time off bank. Additionally, an employee is not exempt when their salary is reduced when workflow for the company is slow. Salaried workers often work schedules which cause their hours of work to fluctuate from week to week without a change in their salary. When this is the case, and there is a clear understanding between the parties that the fixed salary is being paid for total time work (not a certain amount of hours) the arrangements are allowed so long as the employee is not paid at a rate less than minimum wage for the first 40 hours and extra compensation is paid equivalent to time and a half to compensate for the hours worked over 40².

In summary, if you are working over 40 hours a week and believe you should be receiving overtime payments you may want to check with a lawyer to see if you are owed money. Not only will these unpaid overtime wages provide you with additional income, they will also provide you with a better negotiating position moving forward.

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² 803 KAR 1:060 §7(4)(c).