



KELLER AND HECKMAN LLP

WAGE HOUR AND OVERTIME ISSUES

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DOL Overtime Rule

- White Collar Exemptions
 - Executive
 - Administrative
 - Professional
 - Outside Sales
 - Computer employees

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Three Tests For Determining Exemption

- Salary Level
- Salary Basis
- Job Duties

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Salary Level

OLD

- Salary Level = \$250/wk

NEW

- Salary Level \$455/wk
- Highly Compensated = \$100,000 plus customarily does exempt work are exempt

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Salary Basis Test

OLD & NEW

- Paid predetermined amt.
- Pay not reduced for quality or quantity

NEW

- Paid full salary for any week in which employee does *any work (except sickness, disability, discipline)*
- Not docked if ready to work but business shuts down

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Salary Basis Test

OLD

- Improper deduction = inadvertent destruction of exempt status!

NEW

- Improper deduction:
 - If isolated, just reimburse employee
 - Else it just results in loss of exempt status for the time period improper deductions were made for all employees with same job, same manager.

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White Collar Exemptions

OLD

- 80% of duties must be exempt

NEW

- “Primary duty” = main duty
- “Primary duty” must be exempt, generally meaning more than 50% but if less than 50%, then other factors can be considered.

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Executive Exemption

Much more inclusive of:

- departments and subdivisions
- “customarily & regularly” directs the work of two or more employees
- Authority to hire/fire need not be final

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Administrative Exemption

- Primary duty is office or non-manual work related to “management or general business operations”
- Use of discretion and independent judgment
- “Primary duty” generally 50%, but looks at totality of factors

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Professional Exemption

- “primary duty”
 - Work requiring “advanced knowledge”
 - predominantly intellectual
 - includes work requiring the consistent exercise of discretion and judgment;

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Computer Exemption

- Salary or fee basis (\$455/wk or \$27.50/hr)
- computer systems analyst, programmer, software engineer or other similar worker in the computer field
- Consulting With Users
- Design, Development, Documentation, Creation, Testing, Modification of Computer Systems, Programs, Operating Systems, or A Combination Of These

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NPC Sample Job Descriptions

- We are discussing sample job descriptions posted at:
http://www.navref.org/development/main_conf/all1_flsa.htm
- Executive Director
- Controller
- Research Associate
- Research Technologist??

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THANK YOU!

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EMPLOYMENT LAW GROUP

Employment Counseling

In addition to extensive nationwide litigation experience, our employment lawyers work to provide responsive, effective counseling designed to steer employers out of trouble. Keller and Heckman's approach is different: we partner with an employer to find legal solutions that will help it achieve its business objectives.

Discrimination and Harassment Claims

Employers face a delicate environment as new case law increases the potential for liability. While most claims are without merit, we partner with management to provide counseling and training, thereby reducing an employer's exposure. Our attorneys have handled a large number of discrimination and harassment claims – based on race, sex, national origin, disability, age and many others - with highly effective results.

Partners In Employment Law Compliance

We have successfully partnered with employers' compliance efforts under the FMLA, HIPAA and other employment laws. We also represent large government contractors, which face requirements particular to that industry. We provide in-house training, assist in developing employment handbooks and policies, and provide fast, responsive answers to every-day human resources questions.

Wage and Hour Laws

Even the most well-intentioned employers are surprised to discover the number of wage and hour violations that exist in their payroll processes. For multi-state employers, there is great exposure to government audits and wage and hour claims by employees. We have significant experience performing internal audits as well as representing employers in this area.

Occupational Safety and Health Law

Our OSHA practice is nationally recognized. We have represented industry in virtually every significant rulemaking in the past quarter century. Our OSHA attorneys have successfully defended companies in OSHA investigations and citation contests nationwide, in federal and state-plan states.

Nationwide Counsel and Litigation

Our attorneys have participated in litigation and counseling in employment and OSHA law matters in over thirty states throughout the nation. We have significant experience before administrative, state and federal courts. We have worked with, and testified before, state and federal agencies in developing the law, and we have practiced before appellate and supreme courts.

About the Firm

Keller and Heckman has offices in Washington, D.C., San Francisco and Brussels, Belgium. Keller and Heckman is proud to have celebrated our 40th Anniversary this past year. The Firm has practiced in almost every state, in over 21 different areas of law, including employment law.