

NO, YOU CAN'T WRIGGLE OUT OF PAYING OVERTIME

Looking for an easy way out of paying overtime? Using day rates? It's a convoluted issue that (ironically) makes accounting teams put in longer hours to comply with all the various labor mandates.

You can't simply raise pay, however, or change a title to make a position exempt from overtime. And if you try a short-term fix like these, it can be very expensive in the long run. Getting caught out of line can cost you many times what the employee earned in penalty pay; the fines in some jurisdictions run as high as 30 days of additional pay!

So banish those easy-way-out thoughts. Here's what you need to know about overtime to stay out of trouble.

The 3 Tests for OT Eligibility

There are three "tests" applied to each employee's situation to determine if the person can be classified as "exempt" from overtime, or if they must be classified as "non-exempt", and overtime eligible.

1. Salary level

- a. This amount varies by state. Some states have implemented their own salary minimum, while others rely on the federal standard. Be sure to check what amount applies to the locality where the job is located.
- b. In California, the salary has to be at least twice the state's minimum wage. But this might vary depending on the size of the company, so be careful.

2. Duties performed/job function

- a. Does the job require a high skill level? A certification or license? Does this person supervise the work of others? If so, they are exempt from overtime if they perform these advanced duties more than 50% of the time, *and* if they meet the other requirements listed here.
- b. Is it highly supervised work? Does it require only a few years of experience? You're in the danger zone and the employee may be eligible for overtime.

3. Judgement test (the murkiest of all)

- a. Does this person exert authority and discretion? If they make important decisions on a daily basis that shape the way your company operates, you're likely okay calling this position exempt from overtime.
- b. Does this person not make judgement calls? Are they afraid to make a decision? Will they get in trouble if they exceed their pay grade by making a decision they shouldn't make? Then they are likely *not* exempt from overtime.



*Need some help or clarification?
Contact:*

Jenn McCabe, Consulting Partner
E: Jenn.McCabe@armaninollp.com
P: 310 850 3321



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These three tests aren't all you need to consider (yep, it's complicated). Here are some other pitfalls and details to put on that sticky note on your blotter.

- When a person is exempt from overtime, they are paid for a “body of work”. In other words, you pay them to get a job done, whether it takes 30 hours or 60 hours.
- Paying a “day rate” is effectively paying an hourly rate, which means the position is eligible for overtime pay.
- In some jurisdictions, notably California, hourly (and therefore overtime-eligible) persons must be allowed to take a *documented* meal break. Otherwise, overtime “penalty pay” is due for one hour that day. Paid breaks are also required, so know what you have to provide by law. • There is no limit to the rate of pay when a person is eligible for overtime. Good examples here are union jobs or paralegal positions, which can have high hourly rates.
- Timesheets are critical documentation! Make hourly workers sign them, because you have to be able to show that the worker provided the information to your payroll processors. Have someone approve the timesheets, too, to ensure they are accurate. (The rub is that if the worker fails to do a timesheet, the employer has to figure out how much to pay, and then pay on time even without having perfect information...)

When it comes to overtime, it's best to know the rules ahead of time and behave in a risk-averse, educated way. Call our HR experts if you have any questions about the ins and outs of OT.



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Jenn has more than 25 years of outsourced HR, accounting and finance experience, with a particular expertise in startups and the advertising and creative production industries. She is passionate about seeing companies utilize the latest accounting and HR technology to maximize their efficiency, productivity, and ultimately, success.

Before joining Armanino, Jenn founded and led Team Jenn Corp., a firm dedicated to the strategic financial management of startups and small businesses, offering a comprehensive back office solution with accounting, finance and HR solutions. Previous roles include stints at advertising giant Ogilvy and Mather, and in the cash management industry.

