

The Overtime Exemption

AZNHA Annual Conference October, 28, 2016

Presented by: ManageStaff

Who is this guy?

Matt Roumain

*ManageStaff, Business Development
JD, Sandra Day O'Connor College of Law
Compliance and Human Resources*

mroumain@managestaff.com / 602.214.6409

What's a
ManageStaff?

ManageStaff

Human Resources Outsourcing

Based in Tempe, AZ; Established in 1998

*Payroll, Compliance, Workers' Compensation,
Drug Testing, Unemployment Claims, Benefit
Administration, Immigration Verification,
Onboarding, Terminations, etc.*

What will we
cover?

*The Overtime
Exemption Rule*

*How it affects the In
Home Care industry*

*Maintaining
Compliance*

What is the OT Exemption and to whom it Extends

The Overtime Exemption

What is the
Overtime
Exemption
and to
whom Does
it Apply?

*Executive or
administrative*
employees earning
more than \$47,476 are
exempt from OT pay

The Overtime Exemption

What
does this
mean?

Salary alone does not exempt an employee from overtime...

An employee's '**primary duty**' must also be that of an '**executive**' or '**administrative**' employee

The Overtime Exemption

The Formula

Salary + Primary Duty = OT Exempt

The Overtime Exemption

What is the
current
salary
threshold?

\$23,660_{/year}
(\$913_{/week})

The Overtime Exemption

What is the
new salary
threshold
Beginning
Dec. 1?

\$47,476 /year
(\$913 /week)

The Overtime Exemption

The Formula

Salary + Primary Duty = OT Exempt

(\$47,476) + Primary Duty = OT Exempt

The Overtime Exemption

What is a Primary Duty?

*The principal, main, major,
or most important duty that
the employee performs*

The Overtime Exemption

What is an Executive?

- Manager
- 2 or more employees
- Authority to hire or fire

- *Primary duty must be managing the enterprise in which the employee is employed, or managing a customarily recognized department or subdivision of the enterprise;*
- *Must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and*
- *Must have authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight*

The Overtime Exemption

What is an Administrative Employee?

- Office/Non-Manual Work
- Inward-looking Work
- Discretion/Independent Judgment

- *Primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customer's; and*
- *The employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance*

The Overtime Exemption

The Formula

Salary + Primary Duty = OT Exempt

(\$47,476) + (Executive/Admin) = **OT Exempt**

The Overtime Exemption

One more thing: *Salary Basis*

- 90% of the salary level must be paid on a “salary” basis
- Up to 10% may be nondiscretionary or incentive bonuses

An employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed

The Overtime Exemption

The Final Formula

**Salary + Primary Duty + Salary Basis
= OT Exempt**

(\$47,476) + (Executive/Admin) + (at least 90%
of wages paid as salary) = **OT Exempt**

The Overtime Exemption

How this affects the In Home Care Industry

The Overtime Exemption

Who is affected?

- **4.2 million U.S. workers**
- **1 in 4 salaried AZ employees**
- **In Home Care Coordinators**

The Overtime Exemption

Why In Home
Care
Coordinators?

plain and simple...

*they often work more than
40 hours in a week are paid
a salary*

The Overtime Exemption

Why is this an issue?

- Salary
- Primary Duty

Salary + Primary Duty = OT Exempt

(\$47,476) + (Executive/Admin) = OT Exempt

Even if the in home care coordinators meet the salary test, are they “executive” or “administrative” employees?

The Overtime Exemption

What is an In Home Care Coordinator's Primary Duty?

In Home Care Coordinator Job Duties:

- Manage all aspects of client care
- Direct supervisor of caregivers
- Responsible for managing all scheduling between clients and caregivers
- Conduct supervisory visits in the home while caregivers are on shift
- Assist in front end of payroll
- Hold caregivers accountable for following agency policies and procedures and counseling when not followed
- Participate in on call rotation

The Overtime Exemption

What is an In Home Care Coordinator's Primary Duty?

Must answer "Yes" to all three questions

Executive Duties – Does your In Home Coordinator:

- 1. Manage a department or division (e.g. East Valley, West Valley, last names "A-L");*
- 2. Regularly direct the work of 2 or more employees or their equivalent (e.g. 1 full-time employee and 2 part time employees); and*
- 3. Have the authority to hire or fire?*

The Overtime Exemption

What is an In Home Care Coordinator's Primary Duty?

- Must answer “Yes” to both questions
- Examples of primary duty work:
 - Taxes
 - HR
 - Purchasing
 - Budgeting
 - Marketing

Administrative Duties – Does your In Home Coordinator:

- 1. Perform office or non-manual work directly related to the management or general business operations of your business or customers' businesses; and*
- 2. Exercise discretion and independent judgment with respect to matters of significance*

The Overtime Exemption

Catch 22

If In Home Care Coordinators **are**:

1. Executive or Administrative employees; and
2. Are paid a salary

Then, beginning Dec. 1 they have to be paid at least \$47,476 annually OR be paid time-and-a-half for any hours worked in excess of 40 per week

If In Home Care Coordinators **are not**:

1. Executive or Administrative employees; and
2. Are paid a salary

Then, the employees should already be paid time-and-a-half for any hours worked in excess of 40 per week

Solutions: How we make this work

The Overtime Exemption

Beginning Today

- RECORD
- ADJUST
- MAINTAIN COMPLIANCE

How we make
this work:

35 DAYS OUT

The Overtime Exemption

How we make
this work:

3 Rs

- *Record*
- *Require*
- *Retain*

RECORD

- Record hours for *ALL* employees – especially, your salaried employees
 - Burden on the employer to prove actual hours worked
- Require *ALL* employees certify their time cards each pay period
- Retain *ALL* cards

The Overtime Exemption

How we make
this work:

*Weigh lower
productivity
against increased
costs*

ADJUST

- Keep salaried employees salaried
 - Limit hours worked to 40; or
 - Pay time-and-half for hours over 40

The Overtime Exemption

How we make
this work:

*Based on
tracked hours
worked over
next 35 days*

ADJUST

- Convert to hourly and adjust for OT

The Overtime Exemption

OT Pay Conversion Calculator

HOURLY TO SALARY			SALARY TO HOUR							
INPUT		OUTPUT		INPUT		OUTPUT				
Rate		Weekly		Salary	Hourly Conversion	OT Exempt Salary		Converted to Hourly to Include OT		
Hourly <input type="text" value="\$14.00"/>	<input type="text" value="\$14.00"/>	Straight Pay	\$560.00	Annual <input type="text" value="\$32,000"/>	Straight Pay <input type="text" value="\$9.85"/>	Weekly	Pay	\$615.38	Weekly	
OT (1.5x) <input type="text" value="\$21.00"/>	<input type="text" value="\$21.00"/>	OT Pay	\$315.00	Weekly Hours	OT Pay <input type="text" value="\$14.77"/>					\$393.85
Weekly Hours		Gross Pay	\$875.00	Straight <input type="text" value="40"/>						\$221.54
Straight <input type="text" value="40"/>	<input type="text" value="40"/>	Bi-weekly		OT <input type="text" value="15"/>						\$615.38
OT <input type="text" value="15"/>	<input type="text" value="15"/>	Straight Pay	\$1,120.00	Total <input type="text" value="55"/>						
Total <input type="text" value="55"/>	<input type="text" value="55"/>	OT Pay	\$630.00							
		Gross Pay	\$1,750.00							
		Semi-Monthly								
		Straight Pay	\$1,213.33							
		OT Pay	\$682.50							
		Gross Pay	\$1,895.83							
		Annual								
		Straight Pay	\$29,120.00							
		OT Pay	\$16,380.00							
		Gross Pay	\$45,500.00							

Email me for it: mroumain@managestaff.com

How we make this work:

- *Flex Schedules*
- *No or small on-call pay*

ADJUST

- Flex Schedules
 - Stagger schedules to account for weekend work
 - EE1: Tue-Sat; EE2: Sun-Thur
- Minimal On-Call Pay
 - Not required to pay employees while waiting on-call
 - Must be paid once they are actually working (e.g. taking a phone call)
 - De minimis pay at a flat rate (e.g. \$15) allows employer to place restrictions (e.g. no drinking)

The Overtime Exemption

How we make
this work:

*Bring on more
employees*

ADJUST

- Hire Part-Time to Fill the Hours
 - More employees to manage
 - Greater tax and benefit burden
 - May be able to leverage employees from other providers looking to supplement income

The Overtime Exemption

How we make
this work:

DOCUMENT
DOCUMENT
DOCUMENT

Maintain Compliance

- Review job descriptions
- Signed time cards
- Clock-out/in for lunch
 - Lunch away from work area
- Create, Review, Update Handbooks
 - Employee acknowledgement
- Create and use employee schedules
- Discipline (and document!) if employees do not follow policies
- Stay on top of the ever-changing documentation

The Overtime Exemption

Matt Roumain

602.214.6409

mroumain@managestaff.com