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Paying an Employee a Salary Does Not Automatically Mean "No Overtime."

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Paying an employee a salary does not automatically eliminate the requirement to pay the employee overtime. Too often, we hear that, "the employee is paid a salary so overtime doesn't apply." Under the Fair Labor Standards Act, for the executive, administrative, or professional exemptions from the requirement to pay overtime to an employee to apply, an employee must satisfy the following three requirements: (1) the employee must be paid on a salary basis, meaning a fixed, predetermined amount that is not reduced because of variations in the quality or quantity of the employee's work (the "salary basis test"); (2) the employee must meet the minimum salary threshold of at least \$684 per week (the "salary test"); and (3) the employee's actual job must meet the requirements of the applicable exemption (the "duties test").

Each exemption sets forth a set of "duties" that must be met for the particular exemption to apply. When considering the applicable duties test, the most crucial step is evaluating the employee's actual job duties as performed in practice. Job titles and job descriptions do not determine if an employee is eligible for overtime. In our experience, job descriptions quickly become outdated and often do not reflect the employee's current duties and responsibilities. Additionally, state wage and hour laws may impose different or more stringent requirements, including higher salary thresholds or narrower duties tests, which must also be satisfied. In short, if an employee's day-to-day work does not align with the duties test for the exemption being applied, the employee must be treated as an overtime eligible employee even if they are paid a salary.

The duties test for each exemption is an essential and often overlooked element in the overtime eligibility analysis.

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