

## Overtime & Wage Law Violations Affecting Assistant Managers and Supervisors

### Many “assistant managers” are misclassified as exempt employees

A promotion to a role such as “assistant manager” or “shift supervisor” may bring with it the promise of more pay, increased status, and further advancement opportunities. But for too many employees, this actually turns out to be a way for employers to get free labor without paying overtime – in violation of state and federal wage and hour laws.

Under the federal [Fair Labor Standards Act \(FLSA\)](#), employers need to meet specific criteria to classify employees as “exempt” and thus not subject to [overtime laws](#). Simply calling an employee a “manager” is irrelevant to those standards. If you are an assistant manager, supervisor, or similar employee who doesn’t get paid overtime, know your rights and [contact Nilges Draher LLC](#) for a free case evaluation. We can help.

### Understanding the “executive exemption” for overtime pay

The FLSA requires all employees to be paid overtime (time and a half) for all hours worked in excess of 40 in a workweek, unless an exemption applies. Only certain specific categories of employees are considered exempt.

With regard to managers and supervisors, the relevant category is often called the *executive exemption*. To qualify as exempt under this category, you must:

- have primary duties that involve managing the business or a customarily recognized department or subdivision of the business,
- spend most of your working hours performing managerial tasks, such as hiring, scheduling work hours, directing work, maintaining supervision records, handling grievances and discipline, budgeting, and so on,
- direct the work of at least two full-time employees (or equivalent), and
- have hiring and firing power, or significant input on hiring, firing, promotion, and evaluation decisions.

There is also a minimum salary to qualify as exempt, currently \$35,568 per year. For particularly highly paid employees – those making at least \$107,432 per year – the duties tests are relaxed.

One thing that is notably *not* part of the executive exemption is your job title. That is to say, your employer can’t get out of paying overtime simply by calling you a “manager” – if they could, that would make the overtime laws meaningless. Your job title could be supervisor, manager, director, or even vice president. However, if your job duties and responsibilities don’t qualify for the exemption, then you should still be treated as non-exempt and thus eligible for overtime.

In some organizations with complex reporting structures, an “assistant manager” might indeed direct a subdivision, manage at least two full-time employees, have hiring and firing power, and

so on. However, in most workplaces, an “assistant manager” spends most of their time assisting customers and completing ordinary work tasks, not managerial tasks. These workers should not be treated as exempt – but too often, that’s exactly what the employer does, leading to many hours of unpaid overtime.

### **Remember, “salaried” does not mean the same thing as “exempt”**

While many people (and even some lawyers) use the terms “salaried” and “exempt” interchangeably, they are not equivalent terms.

Being “[salaried](#)” simply means you are paid the same amount from week to week, based on either a fixed number of hours or a fluctuating workweek method. Being “exempt” means you meet the criteria to be exempt from the overtime laws. The vast majority of exempt employees are paid on a salary basis, but not all salaried employees are considered exempt. If you are salaried and non-exempt, then you must still be paid time and a half for all hours worked in excess of 40 in a given workweek.

So, if your employer says, “You’re a manager now, that means you’re salaried,” be immediately suspicious. It is your employer’s prerogative to pay you on salary if they want to, but it is *not* their prerogative to declare that you are ineligible for overtime. They need to prove you meet the criteria to be considered exempt.

### **If you are exempt, your employer has to pay you the same for every week**

One implication of being exempt is that your employer has to pay you the same amount for any week in which you do any work at all, with very limited exceptions – such as your first and last week on the job. In other words, the exemption *cuts both ways* – you may be required to work over 40 hours without overtime pay, but your employer also must pay your full salary even if you work under 40 hours in a given week.

If your employer makes any deductions from your pay due to your number of hours or the quality of your work, then they can lose the exemption, which means they must pay you overtime for weeks in which you work over 40 hours.

### **Misclassification as exempt is an unfortunately common problem**

Quantifying misclassification is difficult, but research indicates it is a common issue in American workplaces. A [2015 study](#) published by RAND Labor and Population found that about one in nine exempt workers is misclassified and should be eligible for overtime. It’s unclear how many of those misclassified workers actually work significant amounts of overtime, but the number is certainly significant.

Misclassification as exempt is a particularly common issue in industries such as retail, hospitality, and direct care. A high performer may be “promoted” to a role such as assistant manager or shift supervisor and treated as exempt when the new role mostly consists of non-exempt work. These “assistant managers” may supervise other employees during individual

shifts, especially while *their* manager is away, but they do not have the level of authority required to qualify for the executive exemption.

### **How to know if you should be getting paid overtime**

Remember, under the FLSA, the majority of employees are not exempt. If your employer wants to treat you as exempt, it is *their* responsibility to make sure each and every element of the exemption is satisfied, including both the salary requirement and the duties requirement.

Here are a few questions to ask yourself if you think you may be misclassified as exempt:

- What are your everyday job duties? Do you spend most of your time handling managerial tasks such as reviewing other employees' work and handling disputes, or are you sweeping, stocking shelves, and assisting customers?
- What level of authority do you have in the organization? Are there other employees who report to you directly? Do you complete their performance reviews? Do you have substantial input on hiring and firing?
- What is your role at work? Do you lead a team? If so, is that team a department or subdivision of the organization?
- Does your employer consistently pay you the same amount for every week you work, regardless of the number of hours?

The answers to those questions may help to determine whether you are truly an exempt employee or not. However, this is not a simple checklist. Ultimately, only a [wage law attorney](#) who understands how the laws apply to exempt employees can tell you whether your employer is violating your rights under the FLSA.

### **What to do if you think you may be misclassified as exempt**

There are two steps you should take immediately if you believe your employer is treating you as exempt even though you don't meet the legal criteria. First, document everything. Keep careful track of your hours worked and any changes in your pay or your job responsibilities. Some of these details may help to determine whether you are exempt or not. Others will help to calculate the compensation you might be able to pursue.

Second, contact an experienced attorney who can explain your legal rights and options. Again, disputes regarding overtime eligibility are complex, and only a lawyer who understands how these cases work can analyze your situation and explain your legal recourse. Depending on the circumstances, you and your coworkers may be able to pursue a class or collective action to recover back pay and change your employer's practices going forward.

If you have any reason to believe you are being misclassified as exempt when you should be getting overtime, don't let your employer continue to get free overtime out of you. Protect your rights. Contact [Nilges Draher LLC](#) today for a free case evaluation. We can help.