

Are Managers exempt?

Managers typically don't receive overtime because they're exempt. [Employers](#) often assume that their management trainees fall into the same category and are exempt. They don't, and they aren't.

This mistake is more significant now because under the Obama administration, the Department of Labor has increased its efforts to crack down on employers who misclassify [employees](#) as exempt. Also, recently, the "hottest" litigation for plaintiffs' attorneys is wage and hour lawsuits. Because this issue arises under federal law, it applies to employers whether they operate in Indiana or in other states.

Basic Rule

Two common exemptions are the executive and administrative. An employee who meets all the requirements of either is exempt. Managers often qualify for one or both. Although the [FLSA](#) doesn't address managers in training, a regulation provides that a management trainee must meet all the requirements of either exemption to be exempt from overtime. The bar isn't lowered simply because the employee is in training.

Another common misconception by employers is the mere fact they're paying someone a salary means that person is exempt from overtime. This too is incorrect. Being paid a salary is only one of multiple requirements that must be met for an employee to be exempt.

Executive and Administrative Exemptions

To qualify for either the executive or administrative exemption, an employee must receive at least \$455 per week on a salary basis and meet other primary duty requirements. Although time isn't determinative, a good rule of thumb is that the primary duty is the duty on which the employee spends more than 50% of his time.

To meet the executive exemption, the employee's primary duty must be management of a department or subdivision of the business; he must regularly direct at least two full-time [employees](#) or their equivalent; and he must have authority to hire and fire, or his recommendations on changes of status must be given particular weight.

To meet the administrative exemption, the employee's primary duty must be the performance of office or non-manual work directly related to management or general business operations of the employer or its customers; and that primary duty must include exercising discretion and independent judgment on matters of significance. Exercising discretion and independent judgment entails the comparison and evaluation of possible courses of action and making a decision after considering them.

Why Management Trainees Usually Aren't Exempt

Management trainees often meet the \$455 weekly salary requirement but fail to satisfy one or more of the other requirements for either the executive or administrative exemption.

For example, a management trainee may shadow a manager who is in charge of a department or subdivision of the business. However, if the trainee isn't in charge of a department or subdivision, doesn't supervise at least two full-time [employees](#) or their equivalent (shared responsibility isn't sufficient), or doesn't have the authority to hire and fire or have meaningful input into changes of status, the trainee doesn't satisfy the other exemption requirements. Simply being present when the manager interviews, discharges, disciplines, or evaluates other employees isn't sufficient.

Management trainees also often fail to satisfy other requirements for the administrative exemption. For example, a trainee may shadow a manager who exercises discretion and independent judgment. However, if the trainee doesn't exercise discretion and independent judgment, or doesn't make any decisions or recommendations but simply follows instructions or procedures, he doesn't satisfy the other exemption requirements.

“Management or general business operations” doesn't include production or sales. To satisfy the second requirement, the employee must assist with the running of the business.

Conclusion

If you consider your management trainees to be exempt, carefully review whether they satisfy all the requirements of at least one exemption. If they qualify for either the executive or administrative exemption, they're not entitled to overtime. On the other hand, if they don't satisfy all the requirements of at least one exemption, they're entitled to overtime for all hours they work over 40 in a week at one and one half times their regular rate. Thus, for example, if the management trainee is paid a salary of \$600 a week and worked 50 hours then his regular rate is \$12 an hour ($\$600/50$ hrs.) and his overtime rate is \$18 for all hours over 40 using the fluctuating work week method of calculating overtime. In this example, he would be entitled to \$600 plus \$180 in overtime pay for a total of \$780. The more hours your management trainees work, the greater the potential liability. Consult with [employment counsel](#) if you're unsure as mistakes in this area can be costly.