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Are Inside Sales Persons Now Entitled To Overtime in New Jersey? They May be, at Least For Now

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Last month, new overtime exemption rules of the New Jersey Department of Labor and Workforce Development (“NJDOL”) became effective. These new rules are intended to bring overtime exemptions under the New Jersey Wage and Hour Law (“NJWHL”) in line with the 2004 revisions to the federal Fair Labor Standards Act rules, by repealing the existing state overtime exemption rules and replacing them with the analogous federal exemptions. NJDOL accomplished this by revising *N.J.A.C. 12:56-7.2* to remove the definitions of the various overtime exemptions and adopted by reference the counterpart in the Code of Federal Regulations (“CFR”), specifically *29 CFR 541*.

However, in an apparent omission, by adopting *29 CFR 541*, the NJDOL removed the state exemption for inside salespersons. The NJWHL inside salesperson exemption had provided that salespeople who received at least 50% of their total compensation from commissions and earned more than \$400 per week, fell under the administrative exemption to overtime. Federal regulations provide a similar exemption, but that exemption is found in a different section of the regulations, not *29 CFR 541*.

NJDOL has indicated that the removal of the inside salesperson exemption was not intended and that it is working on rectifying the situation. In the meantime, however, certain employees who were previously exempt from overtime are, at least for the time being, apparently entitled to receive it.

New Jersey employers who have inside salespersons who were previously exempt from overtime should consult legal counsel to determine how best to handle overtime for such employees, until the state rules are revised.

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