

Massachusetts: An Overview of Overtime:

As an employment lawyer, I represent all types of employers in the greater Boston area. In recent years, the vast majority of matters I've handled involve what's called "wage and hour" violations. In Massachusetts, employers are subject to "strict liability," which is a way of saying that the Commonwealth does not care whether the employer's mistake was made in good faith – if a mistake was made, the employer will pay, and pay dearly. In fact, any employer who is found to have violated the wage laws is subject to *mandatory* triple damages, meaning that the employer will have to pay the employee three times what it should have paid at the outset, not to mention that the employer also is on the hook for the employee's attorneys' fees and court costs.

The most common mistake I see is when a business assumes that all employees that are salaried or commissioned are exempt from overtime. This is a myth. Employers should start off with the presumption that all employees are entitled to overtime, or "time and a half" their regular rate of pay for hours worked in excess of 40 per week. That is to say, begin by assuming that all employees are non-exempt ones. Then, check to see if the employee fits into an exemption that permits an employer to exclude payment of overtime

The overtime exemption rule has two parts: (1) the employee must be paid a salary of at least \$455 per week; and (2) the employee *also* must perform what is referred to as white-collar "exempt duties." This test is often referred to as the "salary basis and duties test." Below is a list and description of the most common white collar exemptions. Note: this article covers the most common exemption, colloquially called "white collar" exemptions. Exemptions also exist for some employees working in non-profits, seasonal positions, schools and agriculture, amongst others.

Executive Exemption: The employee must be paid at least \$455/week in salary, and (1) the employee's main duty must be *managing the company*; (2) the employee must manage *two or more full time employees* (or *their part time equivalents*); and (3) *the employee must have the authority* to hire and fire, or his or her *suggestions* must be given *considerable weight* regarding hiring, firing, promotion, demotion etc. *Examples:* President, CEO; General Manager; Department Head.

Administrative Exemption: The employee must be paid at least \$455/week in salary, and the employee's main duty must be *non-manual work* directly related to the *management or operation* of the business. In this regard, the employee must have *discretion and independent judgment* with respect to significant matters. *Examples:* human resources, finance, accounting, marketing, research.

Professional Exemption: In addition to the salary test, an employee may qualify for the professional exemption by either being a "learned professional" or a "creative professional." The learned professional performs work requiring *advanced knowledge* in a field of *science or learning*, usually acquired by getting a special degree or license. *Examples:* doctor, lawyer, CPA, engineer, architect, scientist, registered nurses,

pharmacists, dentists, teachers. A creative professional performs work that requires *invention, imagination, originality or talent*. Examples: musicians, composers, writers, actors, painters, photographers.

Computer Profession Exemption: A computer professional can either be paid on a salary basis, or be paid at least \$27.63 an hour. The employee's primary duty must involve application of systems analysis, design, creation or modification of computer programs, and the like. The exemption does not apply to those who manufacture, repair or install computers.

Outside Sales: There is no salary basis test for this exemption. The employee's primary duty must be *making sales, or obtaining orders or contracts*. The employee must make these sales "on the road," meaning that the employee cannot regularly work at the employer's place of business, or at home office or other office set up for the employee by the employer.

Highly Compensated Employee Exemption. This exemption applies to employees making at least \$100,000 a year, whose primary duties involve *performing office, or non-manual work*. The employee also must routinely perform *at least one of the exempt duties* of an executive, administrative or professional employee.

Based on this guidance, you probably discovered that most employees are non-exempt, meaning that they are entitled to time and a half their regular rate for hours worked in excess of 40 per week.

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About allyson.kurker:

The Kurker Law Group LLC is a litigation and employment law firm located in Concord, Massachusetts. Having spent years at a large law firm before founding KLG, Allyson Kurker has worked with a variety of clients, from Fortune 500 companies to family-owned businesses, and many in between. While Allyson's clients are varied, her approach is consistent: understand the client's business objectives; counsel clients so they can prevent employment disputes; find early resolutions when possible; litigate tenaciously when necessary. Allyson Kurker has been selected as an "Up and Coming Lawyer" by Massachusetts Lawyers Weekly, in conjunction with the Massachusetts Bar Association. This award is presented annually to 20 "lawyers who have been members of the bar for ten years or less, but who have already distinguished themselves in some way and appear poised for even greater accomplishments." In November 2011, Allyson was honored as a "Rising Star" in employment law by Super Lawyers, a service that rates

outstanding lawyers from more than 70 practice areas. No more than 2.5 percent of the lawyers in the state are named to this annual list.