

# Overtime Rules - Federal

## **Background**

Most employees that are paid hourly are entitled to be paid time-and-one-half their regular rate of pay for any time worked over 40 hours in a seven-day workweek. Some salary- or commission-based employees also must be paid overtime. On August 23, 2004, new federal rules took effect that change the circumstances in which white-collar workers can be exempted from receiving overtime pay. The U.S. Department of Labor (USDOL) has estimated that about 1.3 million workers nationwide will be affected by these changes, with the greatest effect felt in the service and retail industries.

Washington is one of many states with separate laws and rules for overtime pay. Employers must comply with both state and federal overtime rules. Our state's overtime rules have not changed. Any consequence to employers and workers is a direct result of changes in federal law. *Where differences exist between Washington state and new federal overtime rules, an employer must follow the rule that is most favorable to the worker.*

In general, Washington state overtime rules followed the old federal overtime rules. Because the federal rules changed, there will now be some cases in which the federal rules are more favorable to workers, and some in which the state rules are more favorable. An example will demonstrate this point. If, under state law, a worker was required to be paid overtime prior to Aug. 23, 2004, they will still be required to be paid overtime. If, under state law, a worker was not required to be paid overtime prior to Aug. 23, 2004, the new federal law may change their status and require that they be paid overtime.

## **Who is affected by the new federal rules?**

The federal rule changes, and existing state regulations, affect white-collar employees only. Workers not affected by these overtime-exemption rules include blue-collar workers who perform manual labor, construction trades, production workers, probation and parole officers, and park rangers. The new rules also do not apply to first responders such as police, firefighters, paramedics, EMTs, ambulance personnel, rescue workers, and HAZMAT workers. These workers must actually perform the physical duties required, such as fighting fires, solving crimes, or helping crime or accident victims. Agricultural workers are generally exempt from overtime.

## **State vs. New Federal Overtime Rules: Some Major Differences**

- ***Minimum salary requirement.*** Washington's minimum salary for overtime-exempt workers is \$250 per week. The new federal rules raise the federal minimum. It previously was as little as \$155 per week, but now is \$455 per week.
- ***Highly Compensated Employees.*** Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from overtime pay under the new federal rule if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard federal tests for exemption. Washington state overtime rules, which parallel the previous federal rules, do not have this provision.

- ***Outside sales employees.*** Under the new federal rules, an outside sales employee who is exempt from overtime is defined as one who:
  - (1) Customarily and regularly is engaged away from his/her employer's place or places of business; and
  - (2) Has a primary duty of making sales or obtaining orders or contracts for services or the use of facilities, for which the client or customer will pay a consideration.

Washington state rules define an exempt outside sales employee as one who:

- (1) Is customarily and regularly engaged away from his/her employer's place or places of business;
  - (2) Is engaged in making sales, obtaining orders or contracts for services or use of facilities or demonstrating products or equipment for sale;
  - (3) Is paid a guaranteed salary, commission, or fee payment (or combination);
  - (4) Controls his/her total hours worked each week;
  - (5) Spends no more than 20 percent of his/her time doing inside office work not related to outside sales.
- ***Deductions for violation of workplace policies.*** In addition to overtime eligibility changes, the new federal rule also affects deductions from salary that an employer can impose upon a worker who violates organizational policies on workplace safety. The new federal rule allows an employer to impose unpaid disciplinary suspensions of one or more full days for workplace-conduct rule infractions. Washington state allows an unpaid disciplinary suspension in increments of less than one week only for violations of safety rules of major significance. Unpaid disciplinary suspensions for non-major safety violations cannot be in less than full-week increments.