The Exempt Employee

Classification of the Exempt Employee
Exempt employees are essentially salaried employees and are not paid on an hourly basis. Exempt employees fall into executive, administrative, or professional categories. To be properly classified an exempt employee must meet specific criteria provided by state and federal statutes.

California laws parallel the federal Fair Labor Standards Act (FLSA) but with some interpretation exceptions. Both California and Federal laws exercise a somewhat complex “salary test” when determining whether or not an employee has been properly classified as exempt.

Protection for Exempt Employees
Although exempt employees work on a salary basis and commonly do not receive overtime pay, the rules actually do allow for additional compensation for extra hours despite an employee’s exempt status. A number of labor laws and case decisions have in fact provided some strong protection for exempt employees so that their basic exemption from minimum wage and overtime is not abused.

The following is a brief description of some of the statutory and case law protections afforded exempt employees:

Overtime Pay and the “No-Pay Docking” Rule
*Boykin v. Boeing Co* (9th Cir 1997) 128 F3d 1279 provides case law establishing that exempt employees may be paid hourly for work performed in excess of the standard number of hours without destroying the employee’s exempt status. This particular ruling makes the additional hourly pay for exempt employees permissive. This means that an employer may, but is not required to, pay for overtime hours.

The *Boykin v. Boeing Co.* case, however, presented an even more important issue for exempt employees. This court decision solidified the Department of Labor rule that exempt employees are “not subject to reduction [in pay] because of variations in the quality or quantity of the work performed . . . [T]he employee must receive [his or her] full salary . . . without regard to the number of days or hours worked.” 29 C.F.R. 541.118(a). [Currently 29 C.F.R. 541.602(a)] Employers cannot have the advantage of classifying an employee as exempt, not paying overtime, and also docking the employee’s pay for missed work time during a work day.

Employer Penalties for Improper Policies for Exempt Employees
The U.S. Supreme Court in *Auer v. Robbins*, 117 S. Ct. 905 (1997) further enhanced the rules concerning exempt employees declaring that there was an entitlement to back overtime pay for exempt employees when their employers had actual policies that docked their salary in contravention of 29 C.F.R. 541.118. In their discussion this court allowed that that exempt status could also be converted into a wage and hour status to allow for
the overtime pay. Policies may not always be in writing, so a situation concerning pay docking requires a legal analysis.

Protection for exempt employees is considerable and there is a substantial history of court decisions regarding violations of the Federal Fair Labor Standards Act. Remedies awarded to employees can include:

- Back pay
- Interest on back pay
- Personal liability by individual managers and supervisors who act “directly or indirectly in the interest of an employer.” FLSA Section 3(d) and *Dole v. Elliott Travel & Tours, Inc.*, 942 F.2d 962 (6th Cir. 1991)

A willful violation of the Federal Fair Labor Standards Act (FLSA) expands the statute of limitations for claims from two years to three.

Retaliation by employers can trigger legal or equitable relief [FLSA Section 16(b)] and even punitive treble damages. *Travis v. Gary Community Mental Health Center*, 921 F.2d 108 (7th Cir. 1990) and *Martin v. American International Knitters Corp.*, 30 Wage and Hour Cas. (BNA) 1270 (D.N. Mar I. 1992).

The correct classification of an employee as exempt is a legal matter. Both employers and employees who are being called “exempt” should be clear about the laws governing this employment classification. The statute and case law noted in this article are summaries of the basics. Because each factual situation is different an in-depth legal review is recommended.