

Administrative Employees and Overtime Exemptions (Part 2)

Question: I asked you last week about my sprinkler design and installation business. Specifically, I inquired about Connie, our administrative assistant. She is the best administrative assistant we've ever had – ensuring we always have materials on hand, explaining our process to the customers, keeping our books and making sure we always have coffee and doughnuts in the morning for ourselves and our customers. As I mentioned, Connie is extraordinary in the way she keeps our office together and anticipates our needs.

Because of Connie's exceptional skills, I was sure we could classify her as exempt from minimum wage and overtime according to the "administrative" exemption under state and federal law. But you advised me that just because she had the word, "administrative" in her title, that didn't mean she could automatically become an exempt administrative employee. Rather, she would also have to meet the "duties" test for this exemption, such as regularly assisting an executive or performing work under only general supervision.

In addition, you said that an administrative employee must regularly exercise independent judgment and discretionary power, and the employee's primary duty must be the performance of responsible office or non-manual work directly related to the management or general business operations. In other words, someone's title doesn't determine whether or not they are exempt. And if someone is essentially a clerical employee, he or she is not going to fit within the "administrative" exempt classification.

But as I mentioned before, Connie is an extremely competent and professional employee. So would it be possible to classify her as an "exempt professional employee?"

Answer: This is yet another situation where a word means something very different in the law than it does otherwise. While it's understandable that you equate "professional" with being dedicated and competent, the wage and hour laws assign an entirely different meaning to the word.

For employees to be "professional" exempt employees, they must primarily perform work in either learned or artistic professions. This includes teachers in educational institutions or highly-skilled computer professionals. These "learned professionals" are those who have attained knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study. A four-year degree may satisfy this requirement, but associate degrees do not. Neither does several years of "street training," no matter how beneficial that experience might have been.

A "professional" exempt employee must also spend the major portion of the workweek performing professional duties. Although there are exceptions, this generally means more than 50 percent of work time. "Professional" duties refer to work that is predominantly intellectual and varied rather than routine, manual, mechanical, or physical. Finally, like

other exempt employees, a “professional” employee must be in a position where he or she can consistently exercise discretion and independent judgment.

In general, then, exempt “professional” employees have usually obtained several years of college training, and it is that training that makes them qualified to do their jobs. Examples are doctors, lawyers, pharmacists, veterinarians, CPA’s and architects.

There is also something called the “artistic” professional exemption. In that case, the employee does not have to have an advanced degree, but she must perform work that is original or creative in an artistic field.

Finally, a skilled computer professional can fit within the exempt professional category, but he or she must either have an advanced college degree or be paid a salary of at least \$27.63 per hour. All other exempt, white-collar employees, including professionals, must similarly be paid on a salary basis, as opposed to hourly or commission.

For more information on salary basis, see last week’s column and visit our website at www.oregon.gov/boli/ta. That website has information about the law, as well as about the seminars taught by our Technical Assistance Unit. You can also give us a call at 971-673-0824.