



New Jersey Adopts Federal Regulations Addressing Overtime Exemptions

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In a final regulatory action that clears up decades of confusion, the New Jersey Department of Labor and Workforce Development ("NJDOLE") has formally adopted its proposed regulations on employee overtime pay to make New Jersey's overtime rules consistent with federal law. New Jersey employers now can confidently follow the much-publicized federal overtime regulations, and specifically federal rules for determining which employees are exempt from overtime.

Back in March 2011, the NJDOLE proposed amending the State's regulations addressing overtime exemptions to bring them in line with federal law. After having a hearing and reviewing written comments submitted by several individuals, on August 15, 2011 the NJDOLE adopted the proposed amendments without change. Thus, as of September 6, 2011 New Jersey's regulation addressing the overtime exemptions for executive, administrative, professional and outside sales employees (N.J.A.C. 12:56-7.2) adopts by reference the federal regulations found at 29 C.F.R. Part 541 (Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees).

The reason for this modification of New Jersey's regulations is that there were subtle, yet significant, differences between federal and State regulations. That is, both federal (the Fair Labor Standards Act) and state (New Jersey Wage and Hour) law require employers to pay employees minimum wage for the first forty (40) hours worked by the employee in a given workweek, and to pay overtime (time and one half of the employee's regular rate of pay) for all hours worked over forty (40). Additionally, both laws provide exemptions for individuals employed in a bona fide administrative, executive, professional or outside sales capacity. However, there are several differences in the laws with respect to the qualifications for the exemptions. For example, one significant difference is that under New Jersey's former regulation, an employee could not dedicate more than twenty percent (20%) of her working time to non-exempt activities or else she will lose her exempt status. Under federal law, however, this time constraint does not exist. Rather, as long as the employee's "primary duty" consists of exempt activities - such as office or non-manual work related to the management or general business operations - that employee will be properly exempt. How much time an employee spends on non-exempt tasks may be a

factor in determining an employee's exempt status; but, it is not determinative. This is one of only several key differences between federal and State law, which the NJDOL has now sought to correct.

These differences in federal and state law often caused confusion for employers, and it was even possible that an employee could be considered exempt under federal law, but not under state law. However, employers no longer have this as an issue of concern. Now, with New Jersey's recent adoption of the federal regulations, they will no longer have to make the exemption determination twice, but only once under the federal regulations.

If you have questions or concerns related to the new NLRB regulations or other labor and employment matter, please contact a member of Archer's Labor and Employment Department in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300 or in Hackensack, N.J., at (201) 342-6000.

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