

Overtime:

Are You Truly in Compliance?

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The Fair Labor Standards Act (FLSA) requires cities to pay their employees at least the federal minimum wage (which is currently \$7.25 an hour) and overtime pay for all hours worked over 40 in a workweek. The biggest FLSA mistake that cities make is classifying employees who are nonexempt as exempt from overtime. Keep in mind that it is much better to review compliance before the Department of Labor comes in to review for you.

1. What is the Fair Labor Standards Act (FLSA)?

The Fair Labor Standards Act is a federal law that was established by the U.S. Congress in 1938 and has been amended several times since then, most recently in 2011. It is enforced by the U.S. Department of Labor. The FLSA defines the federal minimum wage, employee time recordkeeping requirements and jobs required to receive overtime compensation after 40 hours have been worked in a workweek.

2. What Kentucky law applies to overtime requirements?

KRS Chapter 337 and 803 KAR 1:070 are the specific Kentucky laws that govern overtime exemptions.

3. What is the definition of overtime?

Overtime is time worked by a nonexempt employee that exceeds the employee's normally scheduled workweek. Overtime is time worked over 40 hours in a workweek.

4. What does the term "nonexempt" mean?

Nonexempt employees are covered by the overtime provisions of the FLSA and must record each hour worked on the time record. If the employee works more than 40 hours in one workweek, the employee is paid time and one-half, whether in pay or in accrual of compensatory time (if applicable).

5. What does the term "exempt" mean?

Exempt employees are not covered by the overtime provisions of the FLSA and are paid an agreed amount for the whole job, regardless of the amount of time or effort required to complete the work. Exempt employees do not record hours of work on the time record.

6. What are the criteria that enable employees to be exempt from the FLSA overtime provisions?

To be exempt, an employee must meet ALL of the standards in the following "tests":

1. Be paid over a minimum salary – the "salary-level test"
2. Be paid on a salary basis as opposed to an hourly basis
3. Perform certain duties as outlined in one of the "duties tests"

7. What is the salary level test?

The salary level test requires that an employee's salary must be at least \$455 a week, or \$23,660 annually, in order to be considered exempt from the overtime provisions. An employee with a salary less than \$455 a week must be nonexempt. Part-time employees may be nonexempt even though their annualized salary is well over \$455 a week.

8. What does being paid a salary mean for the purposes of overtime exemption?

Under normal circumstances, employees paid a salary are paid a predetermined amount each week regardless of quantity or quality of work or hours worked.

9. What criteria are used to determine if employees over the wage threshold are exempt from overtime?

To be exempt, an employee must qualify under one or more of the following "duties tests":

1. Executive exemption test. General rules include but are not limited to:
 - a) An employee that is compensated on a salary basis at a rate of not less than \$455 per week



- b) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof
 - c) Who customarily and regularly directs the work of two (2) or more other employees
 - d) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight
2. Administrative exemption test. General rules include but are not limited to:
- a) An employee that is compensated on a salary or fee basis at a rate of not less than \$455 per week
 - b) Whose primary duty is the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers
 - c) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance
3. Professional exemption test. General rules include but are not limited to:
- a) An employee that is compensated on a salary or fee basis at a rate of not less than \$455 per week
 - b) Whose primary duty is the performance of work:
 - 1. That requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction
 - 2. That requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor
4. Supervisory exemption test. General rules include but are not limited to:
- a) An employee whose primary duty consists of customarily and regularly directing the work of two (2) or more other employees
 - b) Who is compensated for his services on a salary basis at a rate of not less than \$455 per week
5. Outside sales employees. General rules include but are not limited to:
- a) An employee whose primary duty is making sales
 - b) Obtaining orders or contracts for services or for the use of facilities for which consideration will be paid by the client or customer
 - c) Who is customarily and regularly engaged away from the employer's place or places of business in performing the employee's primary duty
6. Highly compensated employee test. General rules include but are not limited to:
- a) An employee with total annual compensation of at least \$100,000
 - b) And if the employee customarily and regularly performs any one (1) or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in this administrative regulation

The above is not an all-inclusive list of the requirements. More information and examples of each of the exemption tests are available by requesting 803 KAR 1:070 from the KLC Member Legal Services Department or reading Chapter 10 of the *2011 City Officials Legal Handbook*.

10. Is a nonexempt employee paid for time to travel between home and the work site?

Normally, no. There may be exceptions for travel to sites that are beyond the normal commuting area of the employee.

11. Is a nonexempt employee paid for time to travel between one work location and another work location?

Travel from one work site to another during the workday is work time.

12. May a nonexempt employee waive his/her rights to overtime compensation?

No. All nonexempt employees are compensated for all hours actually worked at the appropriate rate of pay.

13. Can the supervisor make a nonexempt employee leave early on Friday so the employee's total hours will not exceed 40 in the workweek?

Yes. This is one method to effectively manage work time and the budget.

14. Can exempt employees maintain separate overtime records and receive overtime?

No. Exempt employees are ineligible to receive overtime payment or compensatory time off. There are instances, however, when a supervisor might permit flexible work hours to accommodate, for example, an exempt employee who worked an excessive number of hours in a prior work week or who routinely works more than 40 hours in a workweek.

15. Are there specific employment positions that have their own rules?

Yes, pursuant to 803 KAR 1:070. "Police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, parole or probation officers, park rangers, firefighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers, and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling, or extinguishing fires of any type; rescuing fire, crime, or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining, and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work." These employees often "do not qualify as exempt administrative employees, because their primary duty is not the performance of work directly related to the management or general business operations" Basically, if the employee, such as the police chief, is out in the city performing the same duties as any other police officer, he or she must be paid overtime for any hours over 40 worked. 

For more information on exempt versus nonexempt, check out the Department of Labor website at www.dol.gov/elaus/overtime.htm and Chapter 10 of the 2011 City Officials Legal Handbook. For specific legal questions, call the KLC Legal Department at 800.876.4552.