

Exempt Versus Non-Exempt Employees

Initial question: How do we classify and employee as exempt? What does that mean? And what is a typical work week for an exempt employee?

Response from Tracy Cook – May 17, 2011

-Do you have your own personnel policy and/or do you use the city or county's? I would recommend reading what it says about exempt employees and comp time, so far everything that I have found refers to 40 hour work weeks. Employees don't earn comp time until they exceed the 40 hour work weeks. Here is a link to the state's policy (thought it might be helpful for setting up guidelines if you don't have anything like this - <http://hr.mt.gov/content/hrpp/docs/Policies/MOM/ExemptCompensatoryTime2010>)

-Does the City or County have standard 36 hour work weeks? The documentation does seem to imply that if there is a different standard for work weeks then the 40 hour work week rule doesn't apply. That's why nurses can work 48 hours one week and 36 the next. If the city or county commonly uses less than 40 hours as a standard work week then different rules might apply for earning comp time.

-MCA 39-3-405 (<http://data.opi.mt.gov/bills/mca/39/3/39-3-405.htm>) specifically addresses overtime compensation and refers to the Fair Labor Standards Act for guidance.

-MCA 39-3-406 (<http://data.opi.mt.gov/bills/mca/39/3/39-3-406.htm>) talks about exclusions and does mention two things that I think might affect what you are doing. First is letter j " (j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity, as defined in 29 CFR 541.5;" and second is under 2o " (o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee."

-MCA 39-4-107 (<http://data.opi.mt.gov/bills/mca/39/4/39-4-107.htm>) discusses local government employees specifically and again refers to 8 hour days. All of these laws do mention that agreements between employees and governing bodies can change these rules, but I do keep tripping over the 40 hour a week rule.

-The Fair Labor Standards Act (<http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>) also specifically talks about 40 hour work weeks. I think a big part of the issue here is that everything keeps coming back to people who are in jobs that work 40 hours a week must work 40 hours a week before they earn comp time.

-Compensatory time is covered on pages 19-21 on the above pdf. Exemptions for maximum hour and overtime start appearing on page 25.

-Here is a link to the federal code that directly talks about government employees. It does say a lot of the same things as the Fair Labor Standards Act -

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=48d6ee3b99d3b3a97b1bf189e1757786&rgn=div5&view=text&node=29:3.1.1.1.29&idno=29>
<<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=48d6ee3b99d3b3a97b1bf189e1757786&rgn=div5&view=text&node=29:3.1.1.1.29&idno=29>>

-Federal regulations about who can be considered exempt

Section 541 General regulations -

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title29-vol3/pdf/CFR-2010-title29-vol3-part541-subpartA.pdf>

Section 541 Executive employees -

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title29-vol3/pdf/CFR-2010-title29-vol3-part541-subpartB.pdf>

Section 541 Administrative employees -

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title29-vol3/pdf/CFR-2010-title29-vol3-part541-subpartC.pdf>

Section 541 Professional employees -

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title29-vol3/pdf/CFR-2010-title29-vol3-part541-subpartC.pdf>

-I ran out of time before I could call, but the Department of Labor's website said that Wages and Hours office in Salt Lake City could answer questions.

Here is the contact information -

<http://www.dol.gov/whd/america2.htm#Utah>

I think the key things to determine are is a 36 hour week considered a normal work week and are the employees involved truly exempt employees.