

Proposed Montana Overtime Exemptions

An Overview of Proposed Overtime Rules in Montana

Presented by

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Overtime Pay

- Unless exempted, employers must:
 - pay at least minimum wage for all hours worked regardless of the manner of payment of those wages.
 - pay overtime or all hours actually worked over 40 in a work week.
- Each workweek stands alone.
 - you cannot balance one against another to avoid payment of overtime.



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Overtime Exemptions

- Approximately 50 different full or partial exemptions exist.
- Some exemptions are Min Wage & Over Time; some exemptions are OT only.
- The "White collar exemptions" are the most commonly used exemptions.
 - Comp time is not a lawful substitute for OT.



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White Collar Exemptions

- The "white collar exemptions" apply across all industries:
 - Apply to executive, administrative, professional and outside sales.
- Montana currently has its own law so employers must follow a set of rules that is a mix of federal and state provisions.



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The Proposed Rules

- The proposed new Montana regulations would conform the Montana rules to the federal "541 rules" except in the following areas:
 - The Computer exemption will continue to NOT be available in Montana.
 - The Outside Sales Rule will continue to be as the federal rule read prior to the most recent changes in 2004.
 - The salary test will increase significantly to \$626 per week and would be re-indexed annually thereafter.



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Five Exemption Factors

- To be exempt as an executive, administrative or professional employee under the 541 regulations:
 - Minimum salary of \$455 (federal) or \$626 (Montana).
 - Salary basis form of payment.
 - Predominate duty test.
 - Nature of work.
 - "Factor five".
- Exemptions are narrowly construed in favor of OT.
- 39-2-308 makes waivers of Wage and Hour rules invalid.



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Part 541 Overtime Exemptions

	Executive	Administrative	Professional
Minimum Salary	\$455 a week		
Method of Pay	Salary Basis		
Predominate Duty	Generally 50% or More of Working Time in Exempt Work or "most important duty"		
Nature of Work	Management of Enterprise	Administrative Staff Specialist	Advanced Technical Work
Other Tests	Hires/ Fires and Supervises 2+ FTE	Exercises Discretion & Independent Judgment	Exercises Discretion & Independent Judgment

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Sales Exemptions

- Applies to those who are making sales or obtaining orders or contracts for services or for the use of facilities.
 - Includes the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property or "obtaining orders or contracts for services or for the use of facilities" for which a consideration will be paid by the client or customer."
 - "Obtaining orders... or for the use of facilities" includes the selling of time on the radio, the solicitation of advertising for newspapers and other periodicals and the solicitation of freight for railroads and other transportation agencies.
 - Includes outside salesmen who sell or take orders for a service, which is performed for the customer by someone other than the person taking the order.
 - Not intended to exempt persons such as servicemen even though they may sell the service which they themselves perform.
 - Doesn't include outside buyers.
- State will use old "2003" definition of outside sales.

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- An outside salesman must customarily and regularly be engaged "away from his employer's place or places of business".
- Inside sales and other inside work (except such as is directly in conjunction with and incidental to outside sales and solicitations) is nonexempt.
- Characteristically the outside salesman is one who makes sales at the customer's place of business.
 - Any fixed site, whether home or office, used by a salesman as a headquarters or for telephonic solicitation of sales must be construed as one of his employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property.

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- An "outside salesman" is generally limited to spending no more than 20 percent of the hours worked in the workweek performing non-exempt work.
- In many cases, the base to be taken is 40 hours a week, and the amount of nonexempt work allowed will be 8 hours a week.



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DOLI Rulemaking

- The Montana Dept of labor will hold a hearing on the proposed rules on April 2nd at 10:00 am at the DPHHS Auditorium (111 North Sanders)
- Written Comments will be accepted until April 9th. Comments should be sent to Pam McDaniel (pmcdaniel@mt.gov)
 - Pam is a member of the staff of the Wage and Hour Unit.



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My Concerns

- Indexing will make budgeting more difficult. There should be a several month lag between the announcement of the new minimum salary and its effective date each year.
- The average wage includes all compensation but the approach says the minimum salary (not including extras such as bonuses or commissions) must be equal to the average of all compensation.



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- Many small businesses will see labor costs go up dramatically in a bad economy as they start paying exempt employees more or convert them to OT and pay overtime.
 - Moving the minimum salary up will have a ripple effect on other salaries which will need to be adjusted
 - Montana would have perhaps the highest weekly wage requirement in the nation.



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- A lot of employers will inadvertently violate the Montana rules due to lack of awareness that Montana has a different standard.
 - If the goal is to simplify by conforming the rules why complicate but adopting different rules?



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Questions

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- Questions on the proposal
 - Email questions to me at jnys@personnel-plus.com
 - Email comments to Riley Johnson, NFIB State Director mitsi@qwestoffice.net
 - Sign up for Jim Nys Email Group at: www.Personnel-Plus.com



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