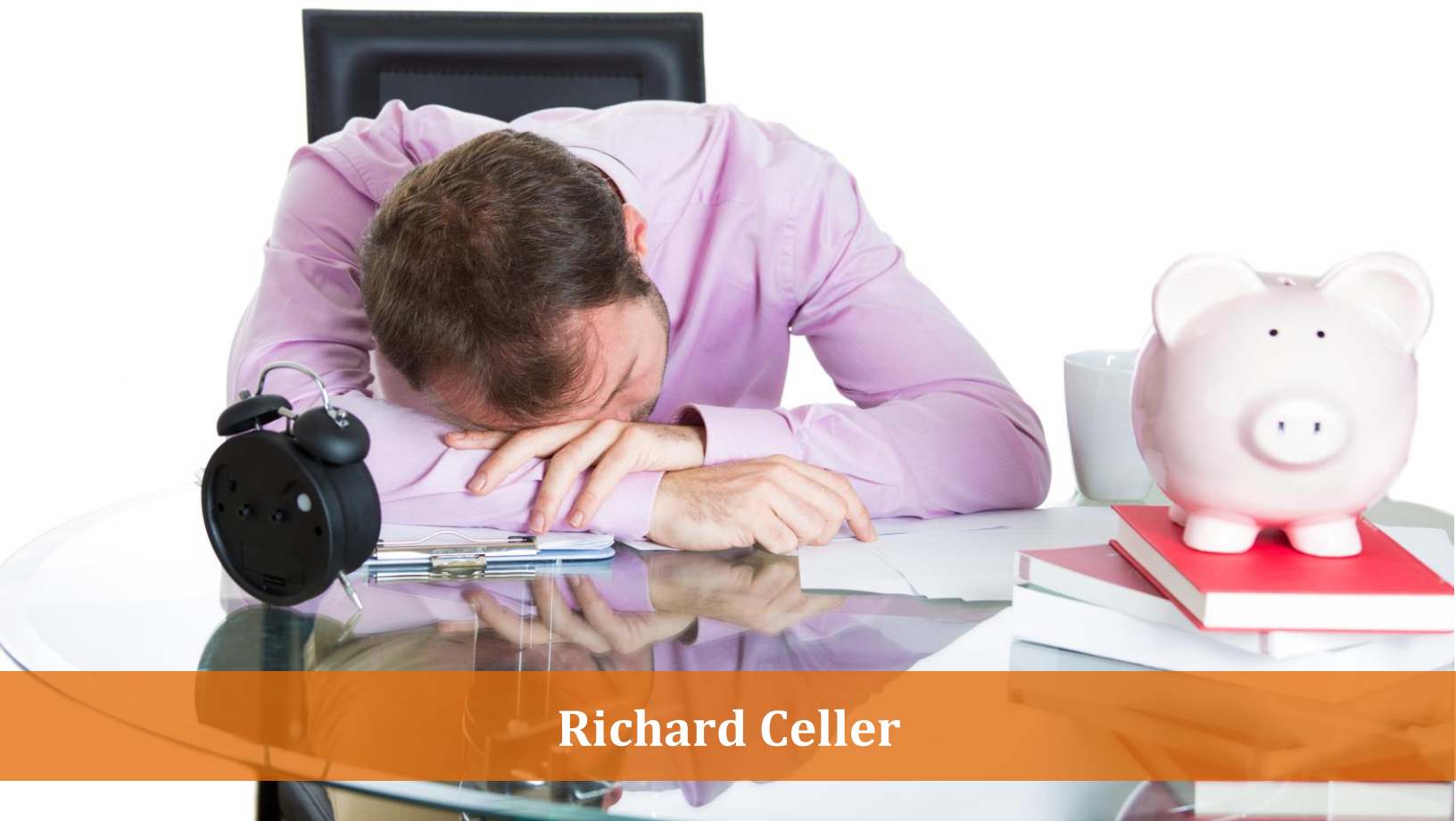


# OVERTIME PAY IN FLORIDA – UNDERSTANDING YOUR RIGHTS

*“The Fair Labor Standards Act, or FLSA, for example, ensures that workers are paid a fair wage for the work they perform by requiring most employers to pay covered workers at least the federal minimum wage.”*



Richard Celler



In the United States, a number of federal laws protect workers from unfair labor practices. The Fair Labor Standards Act, or FLSA, for example, ensures that workers are paid a fair wage for the work they perform by requiring most employers to pay covered workers at least the federal minimum wage. The FLSA also requires workers to be paid overtime pay under certain circumstances. If you regularly work over 40 hours a week, or you work an unusual and/or erratic schedule at your job, you could be entitled to overtime pay.

If you are entitled to overtime pay and your employer is not compensating you accordingly you may be able to pursue legal action against your employer. Because of the fact specific nature of a claim based on a violation of the FLSA it is always best to consult with an experienced Florida employment law attorney to

determine if your employer is violating your rights; however, a basic understanding of your rights with regard to overtime may also be beneficial.

## ARE YOU COVERED BY THE FLSA?



Although the FLSA covers *most* workers in the United States it does not cover *all* workers. Because the FLSA is a federal law, those covered by it must have a federal connection. Fortunately, the law defines that connection broadly.

According to the FLSA, covered employees include:

“All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced

for such commerce by any person, are covered by the FLSA.” “Certain enterprises”, for purposes of the FLSA, include:

- Businesses with an annual gross volume of sales or business done of \$500,000 or more OR
- Certain hospitals, long-term care facilities, and schools OR
- Is an activity of a public agency

Even if your employer does not meet the definition of a “covered enterprise”, you may still be covered by the overtime provisions of the FLSA if you are “engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production.” Examples of employees who meet this definition include workers who:

- Work in communications or transportation
- Regularly use the mails, telephones, or telegraph for interstate communication
- Keep records of interstate transactions
- Handle, ship, or receive goods moving in interstate commerce
- Regularly cross State lines in the course of employment

Work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.



## HOW IS OVERTIME PAY COMPUTED?

If you are a covered employee, and are therefore entitled to overtime pay under the FLSA, you need to understand how overtime pay is calculated in order to ensure that your employer is not violating your rights under the FLSA. If you are entitled to overtime pay that means you must be paid at a rate of at least one and one-half times your regular rate of pay for each hour that qualified for overtime pay. For most employees, overtime pay is required for all hours (or portion thereof) the employee works beyond 40 hours in a given workweek. For

example, if your regular rate of pay is \$10.00 per hour you would earn \$15.00 per hour for every hour of overtime worked. For employees paid by piecework, overtime pay is calculated by dividing the total weekly earnings by the total



number of hours worked in that week unless the parties have agreed to an alternate means of computing pay. Overtime for piecework employees may also be paid by paying one and one-half times the piece rate for each piece produced during the overtime hours.

## WHAT IS A WORKWEEK?



For most workers it is clear when they have worked more than 40 hours in a workweek; however, there are situations where determining if an employee has exceeded the 40 hour workweek. According to FLSA, a workweek is “a fixed and

regularly recurring period of 168 hours -- seven consecutive 24-hour periods.” A workweek does not have to begin or end on any specific day but averaging hours over a two week period (or longer) is **not** permissible when calculating hours for purposes of overtime pay. Finally, a worker cannot waive the right to overtime nor can an employer refuse to pay overtime on the basis that the employer has a policy that only allows employees to work 40 hours a week. In other words, regardless of what the employer’s policy may be with regard to hours worked in a week, if an employee *does* end up working more than 40 hours in a workweek the employee *is* entitled to overtime pay.

## EXCEPTIONS TO THE OVERTIME REQUIREMENTS



The FLSA covers most employees with regard to overtime pay; however, there are exceptions to that general rule. Certain types of employees are exempted from overtime pay requirements. The law construes these exemptions narrowly against the employer, meaning that if there is doubt as to whether or not an exemption applies the law will generally err on the side of concluding that the employee is entitled to overtime pay.

Although the list of possible exemptions is long under the FLSA, some of the most commonly used exemptions include:

- **Executive** –the employee must be salaried at a rate of not less than \$455 per week, he/she must be in a management position, must customarily direct the work of at least two full-time employees, and have the authority to hire and fire employees or participate in the hiring and firing process.
- **Administrative** –the employee must be salaried at a rate of not less than \$455 per week, work at an office or non-manual job related to the management or business operations, and must exercise discretion and independent judgment in the position.
- **Professional** – the employee must be salaried at a rate of at least \$455 per week, perform work requiring advanced knowledge, acquired by a prolonged course of intellectual instruction, in science or learning,
- **Computer** – the employee must be salaried at not less than \$455 per week or the equivalent and work as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker.
- **Sales** –the employee's primary duty must be to make sales or obtain orders or contracts and must customarily and regularly be engaged away from the employer's place of business.



If you believe your employer has violated your right to overtime pay you may be entitled to pursue legal action against the employer which may result in compensation for the wages you are owed as well as additional compensation in some cases. The best way to determine if you are, indeed, owed wages from your employer is to consult with an experienced Florida employment law attorney as soon as possible.

United States Department of Labor, [Exemptions](#)

United States Department of Labor, [Fact Sheet #17A](#)

United States Department of Labor, [Wages, Overtime Pay](#)

United States Department of Labor, [Handy Reference Guide to the Fair Labor Standards Act](#)

## About the Author



### Richard Celler

Richard Celler is the Managing Partner of Richard Celler Legal, P.A., a/k/a the Florida Overtime Lawyer. He created this firm after having served as the Founding Member and Managing Partner of one of the largest employee/plaintiff side employment law divisions in the United States.

In November 2013, Mr. Celler left big firm life with the idea of reopening his own litigation firm with an emphasis on something most big firms cannot provide – a lower volume of cases, and more focus on the needs and attention of every single client.

Mr. Celler's practice focuses on all areas of the employment context from discrimination, harassment, and retaliation under the Florida Civil Rights Act, Title VII, the Family Medical Leave Act, and other employment related statutes. Additionally, Mr. Celler represents individuals in whistleblower and wage and hour litigation (overtime, minimum wage, commissions, final paychecks).

Many firms charge clients for an initial consultation to discuss their claims. Mr. Celler does not. You can call him or email him to discuss your case for free. If he elects to represent you, your case will be handled on a contingency basis, which means that he only gets paid, if you get paid. We encourage you to look at the remainder of our website for information on your rights and benefits in the workplace – [www.floridaovertimelawyer.com](http://www.floridaovertimelawyer.com).

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