

# FLORIDA OVERTIME WAGE EXEMPTIONS

## Most Commonly Used Exemptions (Part 2)

*“Whether you are an employee or an employer it is in your best interest to have more than a passing understanding of the most commonly used overtime exemptions.”*



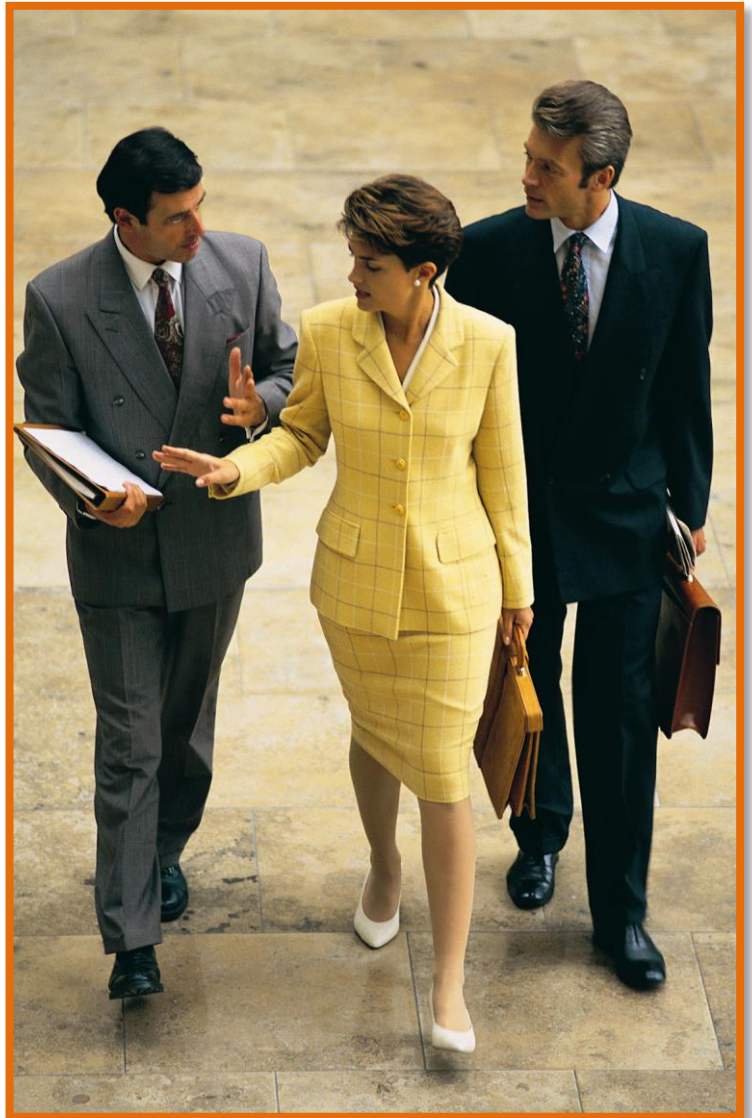
Richard Celler



Most workers in the United States are protected by several important federal laws, including the Fair Labor Standard Act, or FLSA. The FLSA is where the federal minimum wage can be found as well as the overtime wage requirements that apply to many employees. The FLSA essentially requires a covered employer to pay all non-exempt workers overtime wages at the rate of one and one-half the employees regular wage for all time worked beyond 40 hours in a workweek. If an exemption applies, however, the employer is relieved of the overtime wage requirement. Not surprisingly, employers claim exemptions whenever possible. Often, however, an exemption is claimed erroneously. This may be the result of an honest misunderstanding of when the exemption applies or it may be an intentional deception on the part of an employer. Whether you are

an employee or an employer it is in your best interest to have more than a passing understanding of the most commonly used overtime exemptions.

In Part II of this series we will look at the exemptions for “Computer Related Occupations”, “Outside Sales”, “Commissioned Sales People”, “Motor Carrier”, “Seasonal Amusement or Recreational Establishment Employees”, and “Agricultural Employees.” Please see Part I for additional commonly used exemptions as well as Part III where we discuss who is specifically not exempt and what legal options an employee has if an employer has erroneously claimed an exemption for the employee.



## COMPUTER RELATED OCCUPATIONS

For an employer to claim an exemption for an employee in a computer related occupation, all of the following tests must be passed:

- The employee must be compensated either on a salary or fee basis at a rate not less than \$455 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
  - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - A combination of the aforementioned duties, the performance of which requires the same level of skills.

## OUTSIDE SALES

For an employee to qualify under the "Outside Sales" overtime exemption, the following must all be true:

- The employee’s primary duty must be making sales (as defined in the FLSA), 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; and
- The employee must be customarily and regularly engaged away from the employer’s place or places of business.

## COMMISSIONED SALES PEOPLE

The “Commissioned Sales People” overtime exemption requires all of the following tests to be passed:

- The employee must be employed by a retail or service establishment, and
- The employee's regular rate of pay must exceed one and one-half times the applicable minimum wage for every hour worked in a workweek in which overtime hours are worked, and
- More than half the employee's total earnings in a representative period must consist of commissions.

## MOTOR CARRIER EXEMPTION

The “Motor Carrier” exemption can be a bit complicated because an employee could be exempt one day of the week and non-exempt the next, depending on

what he/she is driving and the duties he/she performs for the employer. For the exemption to apply, the employee must be:

- Employed by a motor carrier or motor private carrier, defined as follows:
  - Motor Carriers are persons providing motor vehicle transportation for compensation;
  - Motor Private Carriers are persons other than motor carriers transporting property by motor vehicle if the person is the owner, lessee, or bailee of the property being transported, and the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.
- Drivers, driver's helpers, loaders, or mechanics whose duties affect the safety of operation of motor vehicles in transportation on public highways in interstate or foreign commerce: and
- Not covered by the small vehicle exception, explained as follows:
  - The FLSA overtime provision do apply in any workweek when:
    - The employee performs duties on motor vehicles weighing 10,000 pounds or less.
    - The employee's work, in whole or in part, is that of a driver, driver's helper, loader or mechanic affecting the safety of operation of motor vehicles weighing 10,000 pounds or less in transportation on public highways in interstate or foreign commerce, except vehicles:
      - Designed or used to transport more than 8 passengers, including the driver, for compensation; or

- Designed or used to transport more than 15 passengers, including the driver, and not used to transport passengers for compensation; or
- Used in transporting hazardous material, requiring placarding under regulations prescribed by the Secretary of Transportation;

## SEASONAL AMUSEMENT OR RECREATIONAL ESTABLISHMENT EMPLOYEES

An employer may claim an exemption from the FLSA overtime requirement for any employee employed by an establishment which is an amusement or recreational establishment, if:

- It does not operate for more than seven months in any calendar year OR
- During the preceding calendar year, its average receipts for any six months of such year were not more than 33-1/3 per centum of its average receipts for the other six months of such year."

## AGRICULTURAL EMPLOYEES (FARMWORKERS)

Though the FLSA rules that relate to farmworkers seem rather straightforward – agricultural employees are usually exempt from both the minimum wage and overtime provisions – both workers and employers must also consider the



separate child labor laws as well as the Migrant and Seasonal Agricultural Worker Protection Act when deciding if an employment condition or practice is legal. For purposes of deciding whether or not an FLSA overtime exemption applies, however, the following workers are exempt:

- Employees who are employed in agriculture as that term is defined in the Act
  - Agricultural employees who are immediate family members of their employer
  - Those principally engaged on

the range in the production of livestock

- Local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture less than thirteen weeks during the preceding calendar year
- Non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 16.



Be sure to read Parts I and III of this series as well where we will continue to explore commonly used exemptions, discuss who is specifically not exempt, and explain what you can do if you believe your employer has improperly classified you as an exempt employee.

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

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

United States Department of Labor, [FLSA Overtime Security Advisor](#)

## 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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