

# FLORIDA OVERTIME WAGE EXEMPTIONS

## Most Commonly Used Exemptions (Part III of III)

*“In **Part I** of this series we looked at the “Executive”, “Administrative”, Professional”, and “Highly Compensated Employee” exemptions. In **Part II** we discussed additional commonly claimed overtime exemptions and here, in **Part III**, we will we discuss who is specifically not exempt, common problems, and what legal options an employee has if an employer has erroneously claimed an exemption for the employee.”*



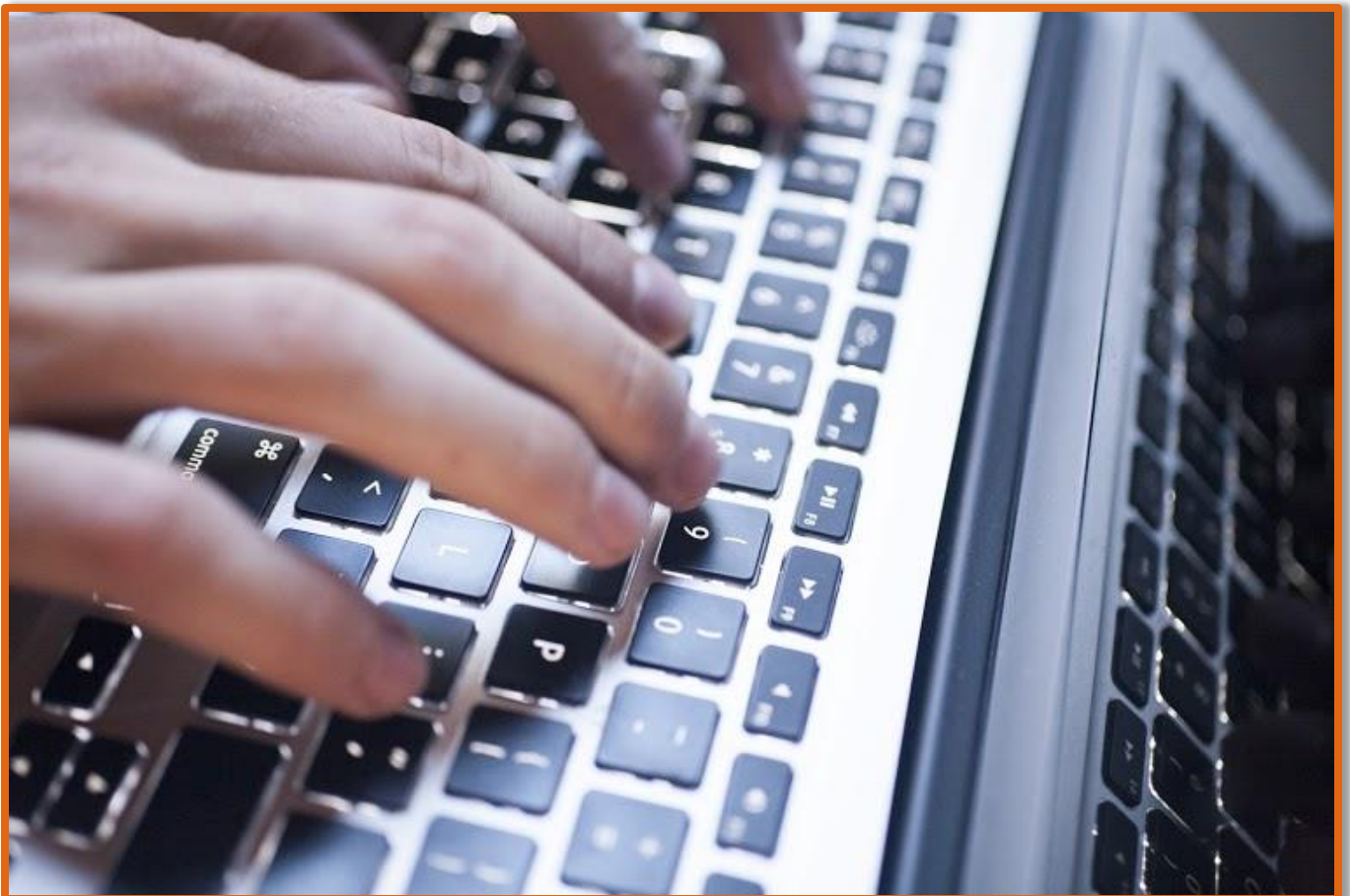


As a worker in the United States you are fortunate to be protected by a number of powerful state and federal laws. Chief among those laws is the Fair Labor Standards Act, or FLSA. The FLSA is a federal law that governs two important aspects of employment – minimum wage and overtime pay. The FLSA mandates that most employers pay employees overtime pay at the rate of one and one half the worker’s regular pay rate for all hours worked beyond 40 in a workweek ***unless*** the employee qualifies for an exemption.

Misclassifying an employee as an exempt employee is a common occurrence, whether it is done intentionally or mistakenly by the employer depends on the employer. Either way, the result is that the employee loses out on overtime wages to which the employee is due. Both employers and employees need to

have a firm understanding of when an employee qualifies as exempt and what happens when an employee has been misclassified.

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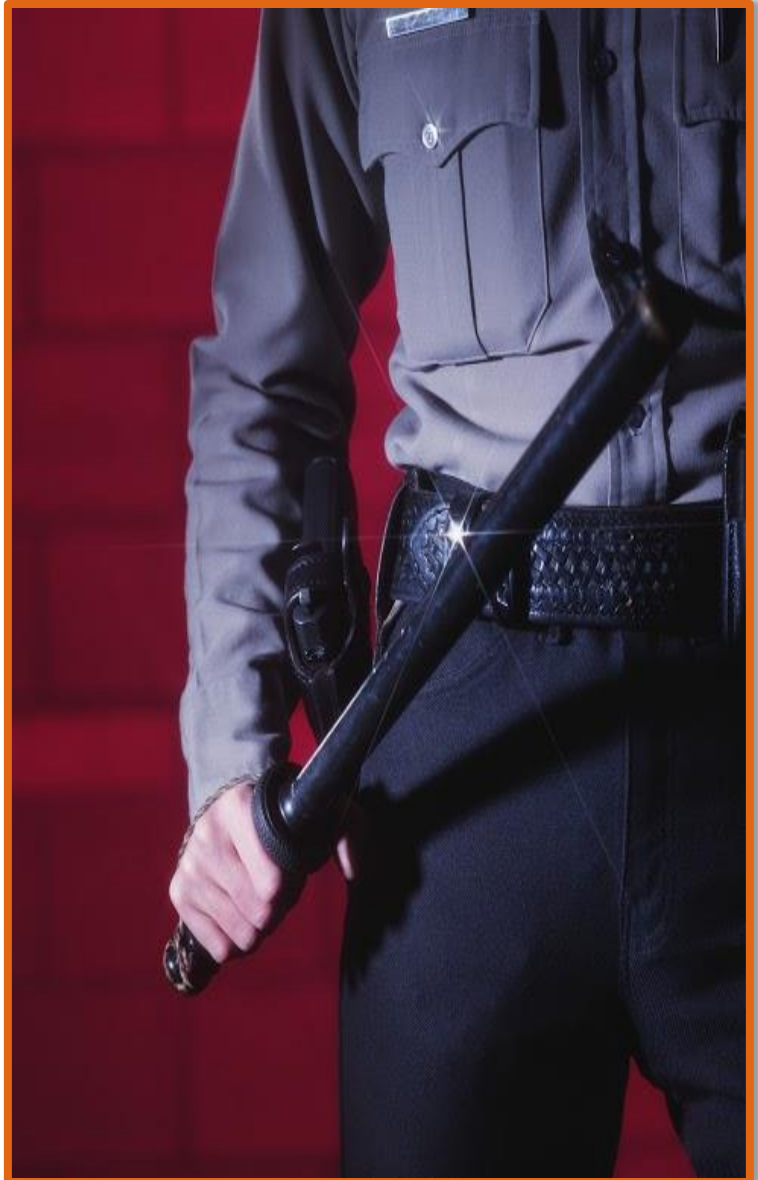
## WHAT CATEGORIES OF WORKERS ARE *NOT EXEMPT*?

Certain categories of workers are specifically not entitled to an exemption under the FLSA even if they appear to meet the requirements of a listed exemption, including:

- **Blue Collar Workers** -- The exemptions provided by FLSA Section 13(a)(1), which exempts highly paid workers, apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to “manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.”



- **Rescue Personnel** – exemptions under the FLSA also do not apply to “police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, 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.”



## COMMON PROBLEMS WITH OVERTIME PAY

Along with misclassifying employees as exempt when, in fact, they are not, there are some additional common problems employees may face with receiving overtime pay to which they are entitled. Employers often try to get around paying overtime wages as required by the FLSA by instituting one of the following policies, all of which violate the FLSA:

- **Lump sum pay** – this involves paying employees a lump sum for working overtime. For example, an employer might offer to pay employees \$150 a day to work Sundays. Even if the amount exceeds what the employee would make in overtime wages, the policy still violates the FLSA.
- **Salaried overtime** – this involves paying an employee a fixed salary for a workweek longer than 40 hours. For example, if an employer agreed to pay you \$600 for a 50 hour workweek it would violate the FLSA. In that case you would divide your salary by the hours worked and come up with \$12 an hour. Your employer would then owe you an additional \$4 per hour for the 10 hours you worked each week beyond a 40 hour workweek.



- **“Comp” time** –even employees like “comp time” policies; however, they violate the FLSA. “Comp time” involves “banking” overtime hours to be used at a later date. For example, if you worked 45 hours this week you would not actually get paid for the extra five hours this week. Instead, those five hours would be “banked” for you to use at a later time to take time off work with pay.



## WHAT CAN YOU DO IF YOU BELIEVE YOUR EMPLOYER HAS VIOLATED THE FLSA OVERTIME REQUIREMENTS?

If you are an employee and you believe that your employer has improperly categorized you as exempt, or otherwise failed to pay you overtime wages when they should have been paid, you have a right to file a complaint and/or pursue legal action against the employer. Your best course of action is to contact an experienced Florida employment law attorney at this point; however, some information you may need to know includes:

- The Wage and Hour Divisions of the U.S. Department of Labor is responsible for enforcing the FLSA.
- It is a violation of the law to retaliate against an employee because the employee files an overtime or minimum wage complaint.
- You may receive liquidated damages in an amount equal to the back pay owed to you if your claim is successful.
- If the employer's violation of the FLSA was willful or intentional and/or the employer retaliated against you for filing a complaint you could be entitled to additional damages.
- The employer may also face fines for violating the FLSA.
- The FLSA provides that the wrongdoer (the employer) must pay an employee's attorney fees, meaning your attorney's fee will not come out of your pocket in most cases.

Be sure to read Parts I and II of this series as well where we will explore commonly used exemptions in more depth. If you believe your employer has



wrongfully claimed an exemption on your behalf it is important for you to consult with an experienced Florida employment law attorney right away to discuss your legal options.

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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