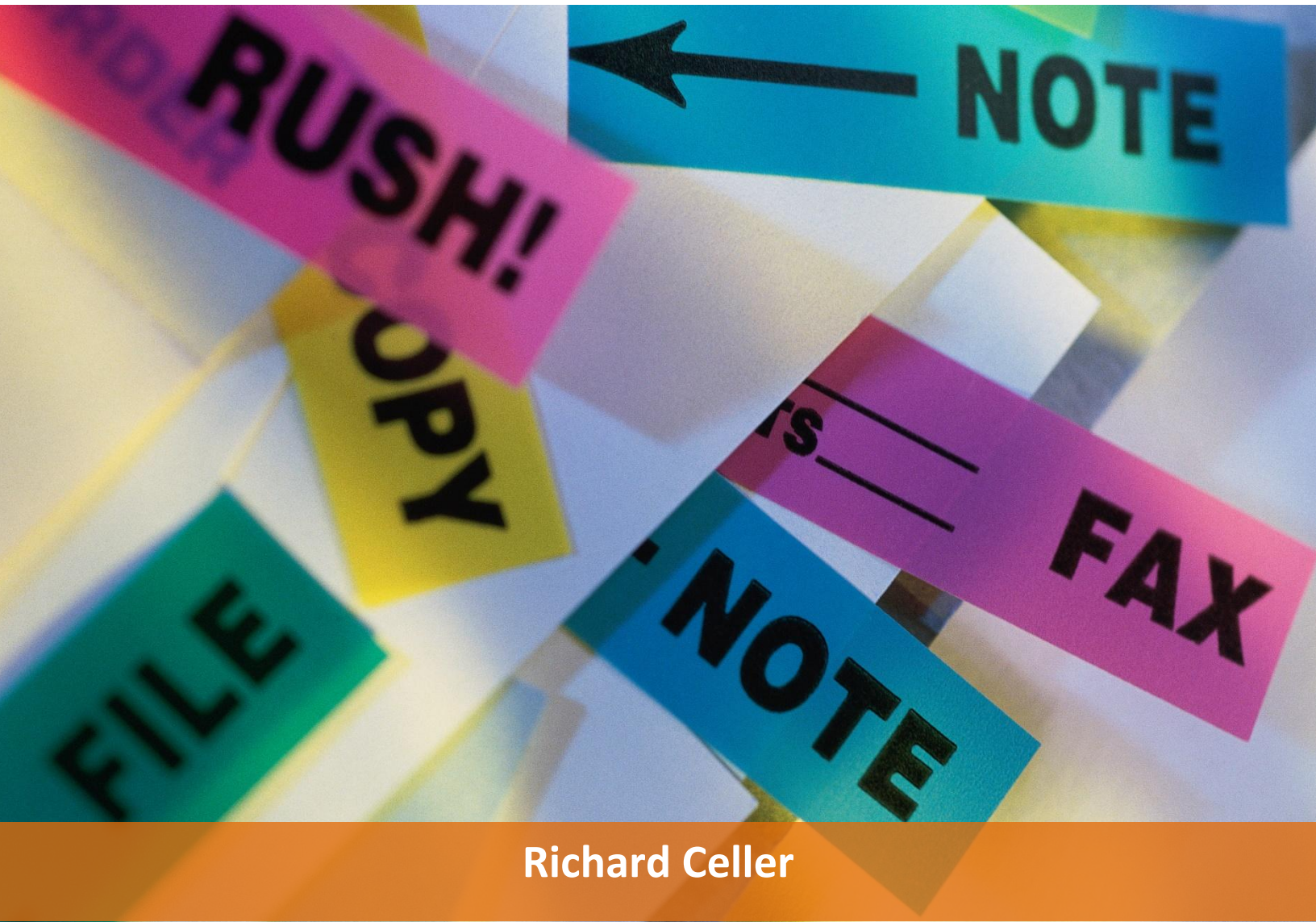


# FLORIDA OVERTIME WAGE EXEMPTIONS

## Most Commonly Used Exemptions (Part 1)

*“There are exceptions and exemptions to both the minimum wage and overtime provisions of the FLSA. Unfortunately, employers often claim an exemption for an employee where none actually exists.”*

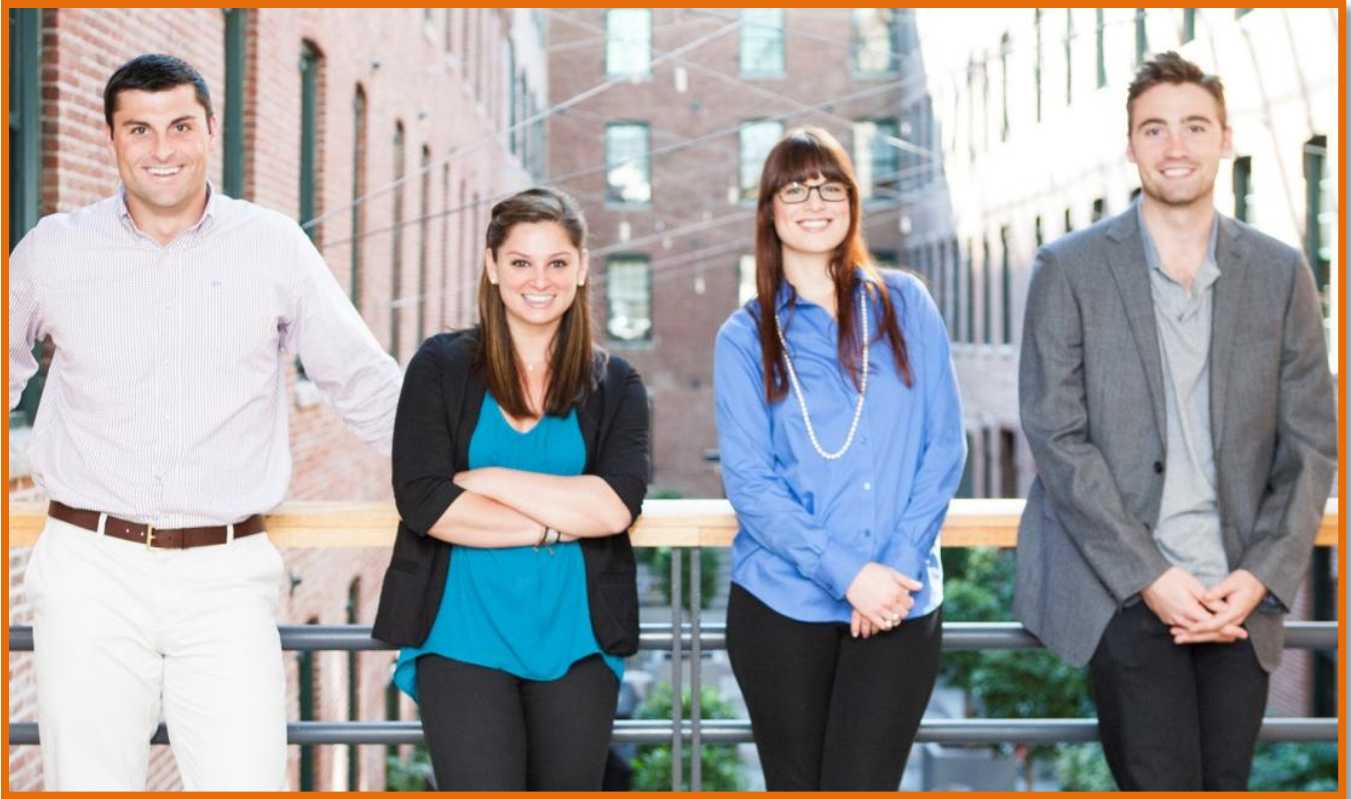


Richard Celler



One of the numerous benefits we all enjoy as workers in the United States is that most of us are protected by a myriad of state and federal laws that ensure we are treated fairly by employers. Specifically, the Fair Labor Standards Act, or FLSA, requires most employers to pay most workers at least minimum wage as well as pay overtime wages when the workweek exceeds 40 hours. As is always the case, however, there are exceptions and exemptions to both the minimum wage and overtime provisions of the FLSA. Unfortunately,

employers often claim an exemption for an employee where none actually exists. Sometimes the error is an honest one; however, employers also intentionally misclassify an employee to avoid paying the additional wages required for overtime work under the FLSA. Because the line between exempt and non-exempt isn't always bright, it is best to consult with an experienced Florida employment law attorney if you are unsure how you should be classified. It may help though to have a basic understanding of the most commonly used exemptions.



In Part I of this series we will look at the “Executive”, “Administrative”, Professional”, and “Highly Compensated Employee” exemptions. In Part II we will discuss additional commonly claimed overtime exemptions and in Part III will 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.

## COMPENSATION REQUIREMENTS

For an employee to qualify as exempt using the Executive, Administrative, Professional, or Highly Compensated Employee exemption they typically must meet a “compensation” test. Part of the compensation test includes the requirement that the employee be paid not less than \$455 per week on a “salary basis” as a general rule. Teachers, and employees practicing law or medicine are

exempt from the salary requirements. According to the FLSA, being paid on a “salary basis” means an employee “regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis.” The employee’s salary cannot vary as a result of the quantity or quality of the work performed nor can it change in relation to the number of days or hours the employee works.

## EXECUTIVE EXEMPTION

In order for an employee to qualify using the “Executive” exemption the employee must pass all of the following tests:

- The employee must be compensated on a salary basis at a rate not less than \$455 per week;
- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

## ADMINISTRATIVE EXEMPTION



For an employer to claim an “Administrative” exemption for an employee, and thereby avoid paying overtime wages, the employee must pass all of the following tests:

- The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week;
- The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

## PROFESSIONAL EXEMPTION

The “Professional” exemption, for purposes of avoiding overtime wages, is subdivided into two categories of professionals – learned and creative – with each having its own criteria for applicability as follows:

- **Learned Professional**

- The employee must be compensated on a salary or fee at a rate not less than \$455 per week;
- The employee’s primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

- **Creative Professional**

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee’s primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

The “Highly Compensated Employee” exemption is essentially a “catch-all” category designed to apply to employees who should clearly be exempt from the overtime requirements found in the FLSA but who do not neatly fit into any of the existing categories. To qualify as a “Highly Compensated Employee” the employee must:

- Perform office or non-manual work;
- Be compensated on a salary or fee basis at a rate not less than \$455 per week;
- Be paid a total annual compensation of \$100,000 or more;
- Customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

If your employer has been claiming an exemption for you based on your classification as an “Executive”, “Administrative”, “Professional”, or “Highly Compensated Employee” and you believe that classification is incorrect you should consult with an experienced Florida employment law attorney as soon as possible to discuss the situation. If your employer has, indeed, claimed an exemption in error, you could be entitled to back pay as well as additional damages; however, you must file a claim within a specific period of time or you will forever waive your right to pursue the overtime wages owed to you. Be sure to read Parts II 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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