

Updates from the Office of the Commissioner Representing Employers

Texas BusinessToday

Aaron S. Demerson
Commissioner Representing Employers

July 2022

Dear Fellow Texans,

Welcome to your July issue of *Texas Business Today*! We are excited to continue our Texas Interns Unite! series of events in July!

The Texas Workforce Commission and the Texas Higher Education Coordinating Board invite you to join us for the National Intern Day with a Texas Twist Conference on **July 28th, 9:00am-3:30pm, hosted at the Texas Capitol Auditorium (Capitol Extension, E1.004) located in Austin, TX at 1100 Congress Ave. Austin, TX 78701.**

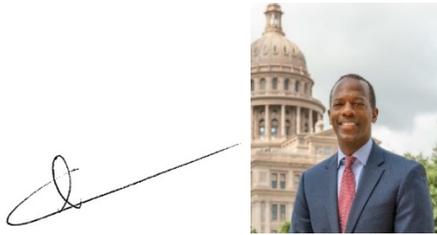
Whether you're a student looking to network or connect with internship opportunities, or an employer looking to expand your intern network, this FREE conference is for you!

There's an exciting agenda being planned featuring motivational speakers, networking opportunities, professional headshots, and more! If you are an employer with current interns, please share this beneficial opportunity with them.

Registration is live at this link: <https://bit.ly/TWC-InternsDay728>. Secure your spot at this no cost conference today!

We at TWC hope y'all enjoyed your 4th of July holiday and took some time to celebrate Independence Day. Our office is committed towards answering any questions employers might have, so please do not hesitate to contact us for any inquiries regarding your respective business needs.

Let's Continue to Make Progress!



Aaron Demerson
Commissioner Representing Employers
Texas Workforce Commission

Register Today!
Texas Interns Unite!
National Intern Day with a Texas Twist Conference

**Texas Capitol Auditorium
(Capitol Extension, E1.004)**
1100 Congress Avenue, Austin, TX 78701

July 28, 2022
9:00am - 3:30pm

REGISTER bit.ly/TWC-InternsDay728

TEXAS WORKFORCE COMMISSION | TX+WORKS | Texas Higher Education COORDINATING BOARD



Salaried Employees Never Get Overtime...Right?

By Mario Hernandez, Legal Counsel to Commissioner Aaron Demerson

Some employers are under the impression that overtime pay is not required if an employee is being paid on a salary basis. However, that is not always the case. Anyone can be paid on a salary basis. However, whether an employer is responsible for minimum wage and/or overtime is dependent on whether the employee is considered “exempt” or “non-exempt.”

Exempt Employees

Exempt employees are those that are exempt from one or more of the provisions of the Fair Labor Standards Act (FLSA), namely minimum wage and/or overtime. While there

are various types of exempt employees, the focus of this article will be the “white-collar” exempt employees.

White-Collar Exemptions

Executive, administrative, professional, computer professional, and outside sales representative employees are all examples of white-collar exempt employees (see: https://twc.texas.gov/news/eft/exemptions_from_minimum_wage_and_overtime.html). In order for one of the white-collar exemptions to apply to an employee, two tests must be satisfied: a salary test and a duties test.

Salary Test

In order to satisfy the salary test, an employee needs to be paid on a salary basis at a rate not less than \$684 per week. For more information about the salary basis requirement please visit “Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)” at the following link: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17g_salary.pdf.

Duties Test

To satisfy the duties test, the primary duty of an employee must be that which is required by the exemption being claimed. For example, if an employer claims that an employee is exempt under the executive exemption, the employee must have the primary duty that is required for the executive exemption. In sum, job titles alone will not be enough. You can find information about the duties test and the primary duties that correspond with their respective exemptions at the following link: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17a_overview.pdf.

Are There More Exemptions?

The answer is yes! There are more exemptions beyond the white-collar exemptions. Some exemptions only apply to overtime, while some only apply to minimum wage, while still others apply to both. For more information about exemptions under the FLSA, please visit the following



link: https://twc.texas.gov/news/eft/exempt_non_exempt_status_under_the_flsa.html.

Non-Exempt Employees

If an employee does not meet the requirements to be an exempt employee (white-collar exemptions or otherwise) then the employee is non-exempt. Non-exempt employees are entitled to minimum wage and overtime. This is the case even if the employee is paid on a salary basis. For example, for purposes of the white-collar exemptions, if an employee satisfies the salary test, but not the duties test, the employee is non-exempt (assuming, of course, that the employee is not covered by some other exemption). For

more information about non-exempt salaried employees specifically, please visit the following link: https://twc.texas.gov/news/efte/h_regular_rate_salaried_nx.html.

Conclusion

An employer's obligation to pay overtime is not always extinguished by paying an employee on a salary basis. Indeed, to be an exempt employee, an employee needs to fit into an exemption. If no exemption fits, the employee is non-exempt and the employee is entitled to minimum wage and overtime. In sum, knowing the differences between exempt and non-exempt status under the FLSA can assist employers in paying employees properly.



IN-PERSON & VIRTUAL

 TEXAS CONFERENCE
FOR EMPLOYERS

Sherman, TX - July 15
(Only virtual spots available!)

Abilene, TX - August 5

San Marcos, TX - September 9

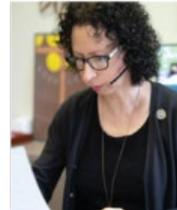
\$175 per person
8:30 AM - 4:15 PM

[Click here to register today!](#)

TEXAS EMPLOYER HOTLINE

1-800-832-9394

Hiring Issues · Medical Leave-Related Laws · Personnel Policies and Handbooks · Independent Contractors and Unemployment Tax Issues · The Unemployment Claims and Appeals Process · Texas and Federal Wage and Hour Laws



Employer Hotline Hours: M-F, 8am-5pm

Information provided by employment law attorneys in the Office of the Commissioner Representing Employers at the Texas Workforce Commission

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analyses of every aspect of the topics discussed. Due to the general nature of the discussions provided, this information may not apply in each and every fact situation and should not be acted upon without specific legal advice based on the facts in a particular case.

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