

Administrative Employees and Overtime Exemptions (part 1)

QUESTION: My brother and I own a sprinkler design and installation business and I have the world's best administrative assistant, Connie.

Connie is unbelievable; she anticipates my every move and she practically runs this place. For example, she always makes sure I have the correct files and necessary supplies, and that the truck is always clean and filled with gas. She sees to it that there is coffee and doughnuts every morning for our customers and if a customer has a problem with delivery or service, she always manages to soothe them. In addition, she does all my payroll and billing accounts.

Connie and I have been working very long hours lately - up to 60 per week - and our schedule isn't likely to slow down until the end of the month. I'm not worried about paying Connie overtime, because she clearly fits within the definition of "exempt administrative employee" under the law. But my partner and I are having a big argument about whether I should promote her to "executive administrative assistant" and give her a bonus.

In short, my partner claims we should not give her extra money, as once we do we can no longer treat her as a salaried, exempt employee and we would have to start paying her overtime.

May I pay Connie a bonus without blowing her exempt status or the exempt status of our other administrative employees?

Or if that won't work, may I re-classify Connie as an exempt "professional" employee?

ANSWER: As for whether you may pay an exempt employee a bonus, Oregon regulations expressly provide that employers may pay extra compensation - in addition to the salary paid - to exempt employees without effecting exempt status. Federal regulations specify that extra compensation in the form of bonuses, commissions, or shift amounts may be paid in addition to the salary of an exempt employee.

This, however, assumes that you have Connie correctly classified as exempt, which brings us to an additional issue raised by the information you provided in your question: Do you have Connie - or the rest of your administrative staff - correctly classified as exempt from minimum wage and overtime requirements?

It is an employer's obligation to establish that an employee meets the criteria for exempt status when the employer classifies an employee as exempt from minimum wage and overtime. Federal and state white-collar exemption statutes include administrative, executive and professional categories of employees. Both federal and state regulations require that employees must perform all of the duties enumerated in the statutes (the duties test) as well as conform to the requirement that employers pay exempt employees on a salary basis (the salary basis test). Federal law also provides that an exempt employee's salary must be at least \$455 a week (or \$23,660 annually).

At first blush, an “administrative employee” sounds like an administrative assistant, which often is a clerical position. But a closer reading of the duties an administrative employee must perform in order to be appropriately categorized as exempt reveals that the category has specific requirements that exceed typical clerical duties or that some might consider “administrative” in nature.

The duties test for the administrative white collar exemption requires that the employee meet all of the following conditions: The employee must regularly assist an executive, or perform work under only general supervision; regularly exercise independent judgment and discretionary power; and the employee’s primary duty must be the performance of responsible office or non-manual work directly related to the management or general business operations of the employer (or responsible work in the administration of a school).

While it is possible that each of these employees meet each of the duties outlined in the statute, paying employees on a salary basis satisfies only one part of the test for exempt employee status. You should evaluate all “administrative” positions to determine whether this is the case. For example, you need to evaluate whether Connie spends a majority of her time performing manual labor like sprinkler installation, or is her primary duty performing responsible office or non-manual work directly related to the management or general business operations of your company?

Next week we’ll answer the question: Does Connie qualify as an exempt “professional” employee?

For more information on this and other important issues affecting Oregon employers, including seminars conducted by BOLI’s Technical Assistance Unit, visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.