

## **Overtime Exemptions – Workers who perform management functions primarily**

Most employees are entitled to be paid 1 1/2 times their wage for hours worked beyond eight hours in a day or for hours worked beyond 40 hours in a week. An employee is only entitled to overtime for work that is requested, acknowledged or authorized by the employer. In some cases, employees are not entitled to overtime wages because they perform management functions primarily. This fact sheet explains this exclusion.

### **Who is exempt from overtime and hours of work under this provision?**

Employees who perform management functions primarily are exempt from overtime under this provision. Management functions affect the control and direction of a business. A key factor is the amount of independent judgment and discretion employees have when operating the business. The more discretion and authority employees have to make business decisions, the more likely it is they are performing management functions primarily.

For example in a franchise business where all of the major decisions on staff, budget and marketing are made at the corporate office, employees might not be considered to be performing management functions primarily.

### **What do discretion and authority mean?**

The issue is how much independence the employee has when making decisions. Employees with the power to make a final decision on most issues would have significant discretion and authority. Employees who need to get approval from someone else, such as a general manager or a board of directors, have less. The more decisions employees can make without needing approval, the more discretion and authority they have. The more discretion and authority an employee has the more likely they perform management functions primarily.

For example a retail store manager who can hire additional employees or fire employees without consulting anyone else in the organization, or who is given a budget for marketing, but can make decisions on how those dollars are spent, has substantial discretion and authority and would likely perform management functions primarily.

### **Are employees called "manager" or "supervisor" exempt from overtime and hours of work?**

Job titles have no impact on whether an employee is exempt or not. The determining factor is the role the person plays in the organization. The more independent authority and discretion employees have, the more likely they perform management functions primarily.

## **Are employees who supervise other employees exempt from hours of work and overtime?**

It depends, but not likely. Supervisory duties alone are not primarily management functions. To determine if employees perform management functions primarily all of their job duties must be examined. An issue that must be investigated is who makes the final decision on things like terminations and discipline. Many supervisors make recommendations on these issues but someone with more authority in the company makes the final decision. Generally, supervisors would not perform management functions primarily.

## **Who determines if employees primarily performs management functions?**

If employers wish to exclude employees from overtime they must be able to show how the employees perform management functions primarily.

## **Are managers who take direction from a board of directors exempt from hours of work and overtime?**

It depends on the level of authority the managers are given and their independent discretion to make decisions affecting the business. Many questions need to be investigated including: how active the board of directors is in the day-to-day operation of the business, how involved they are in monitoring expenditures, and whether the manager has the authority to interpret and implement board policies and procedures.

## **For more information contact the Employment Standards Branch:**

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This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including *The Employment Standards Code* and *The Worker Recruitment and Protection Act*, or contact the Employment Standards Branch to ask for advice.

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