



Subcontractors Association of the Metroplex

PUNCH LIST

The voice of the Subcontractor's Industry

THE FINAL 2016 OVERTIME RULES ARE HERE! ARE YOU READY?



Subbie Sam Says.

You can influence the people that you elect to represent you. It takes some of your time and some of your money, but it's worth it.

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Have you ever heard someone say, 'I'm a salaried employee. I don't get overtime.' or 'I'm a supervisor but I work just like my crew'? Whether a worker is paid by the hour or an annual salary does not determine overtime eligibility, nor does a job title. The federal overtime rules were never that simple and they just got more confusing. In May, 2016, the U.S. Department of Labor issued its final ruling on overtime eligibility for white collar workers. The new law becomes effective on December 1, 2016 and is the first change in the overtime laws since 2004. The change is expected to entitle over 4.2 million salaried white collar workers to overtime pay.

To be exempt from overtime pay, a worker must meet three standard tests: 1) the salary basis test, 2) the salary level test, and 3) the white collar duties test. To meet the salary basis test, the worker must be paid a fixed and predetermined amount that is not subject to reduction because of variations in the quality or quantity of the work. To meet the salary level test, the worker must be paid more than \$47,476.00 per year, or \$913.00 per week. The 2016 rules increased the minimum annual salary level threshold to \$47,476.00 (\$913.00 per week) from \$23,660.00. If the worker is paid less than the minimum annual salary threshold, he/she is automatically eligible for overtime. If the worker is paid more than the minimum threshold, he/she must still pass the duties test in order to be exempt from overtime pay.

There are several white collar exemptions but primarily include the executive exemption, the professional exemption, the administrative exemption and the highly compensated exemption. The executive exemption exempts executive employees from overtime pay. This exemption also affects managers and other supervisors, not just C-level employees. The employee must be paid the full standard annual salary level

(\$47,476.00), must be primarily engaged in managing the business (or a department or subdivision), must regularly direct two or more full-time employees, and is authorized to hire and fire, or have a weighted opinion as to hiring and firing, promotion, or other changes to an employee's employment status.

The executive exemption is most confusing in the construction industry as it relates to superintendents, crew chiefs and other similar managerial/supervisory positions. Even if the supervisor meets the salary level test and meets the duties test, if he/she regularly performs work just like his crew and alongside his crew, he/she will not meet the exemption. The supervisor must perform true non-manual, supervisory work to be exempt.

The next exemption that is often misunderstood is the administrative exemption. This exemption is for office employees such as (but not limited to) receptionists, accounting department workers, human resources, secretaries and assistants, clerks and similar positions. To meet the administrative exemption, the worker must meet the standard salary level test, but their primary duty must be performing non-manual office work directly related to the management or general business operation of the employer or its customers AND must be able to make independent decisions on 'significant matters'.

Office workers making more than the minimum standard salary level must also be able to make independent decisions on significant matters. For example, an office manager may be able to meet the exemption. However, what kind of independent decisions can your Controller make without having to ask upstream management? What kind of decisions can your estimator make? What about your project assistant? These are just examples but an administrative overtime exemption must be able to meet

all prongs of the duties test.

The third most misunderstood exemption is the highly compensated employee (HCE). Before 2016, an employee making \$100,000.00 or more per year was automatically exempt from overtime pay. The 2016 final rule increased the minimum annual compensation threshold to \$134,004.00, and only allows 10% of this amount for quarterly (or more frequently paid) non-discretionary bonuses, incentive payments or other deferred compensation or commissions. Non-discretionary payments are those used to induce employees to work more efficiently, remain at the company, or are tied to profitability or productivity. However, the new rule allows for employers to make payments to 'catch up' if the employee falls short in a specific quarter.

In order to comply by December 1, 2016, employers should immediately review their current overtime policies and their white collar job positions. The Department of Labor does not make any requirements as to the way an employer should comply but only that the employer must comply and keep accurate records. There is no requirement that employers pay overtime-eligible workers by the hour. In fact, employers may comply in a variety of ways such as prohibiting any overtime for white collar workers; pay salaries for regular time and hourly wages for overtime; raise salaries to above the minimum standard levels; use part-time workers; redistribute work hours; change all salaried workers to hourly workers; reduce salaries to offset overtime payments; pay a fixed number of hours which includes overtime hours; or any combination of the above or more.

Credit Tami LaGrone of the office of Cutler-Smith, PC



John Sparks of the North Texas Damage Prevention Council

CALL BEFORE YOU DIG

John Sparks of the North Texas Damage Prevention Council presented a thorough program of what our responsibilities are before we dig a hole or a trench in Texas.

John explained the Call 811 system and its history and

management set up by private business to protect their underground work. He also went over many of the required depths for buried utilities (Electric, Fiber Optic, Telephone, Water, Sewer, Gas, Pipelines, etc.) and ex-

plained the dangers of cutting one. He also explained the liability of the excavator in the event that they do not cover the guidelines.

Thanks to program chair , Selena Zarate for finding this outstanding program.

CREDIBLE LIEN LAW IN THE WORKS



It's been several years of tough negotiating, but it appears that the Texas Construction Association has finally come up with a Lien Law modernization that has a good chance of being passed into law at the 2017 Texas legislative session. The TCA has formed a coalition of General Contractors, Bankers, Developers, Building owners, Home Builders, and Multi-Family building owners to come up with an up to date lien law that will bring the Texas lien laws out of the dark ages. The proposed law simplifies the lien process and

makes it easier for Subcontractors and material suppliers to file a lien. It also is good for the Owners and Bankers because it creates an open, visible record of construction payments and the release of lien for these payments.

SAM will keep you posted as to the progress of this important bill and will soon have a copy of the proposed bill on the website, sam-dfw.org.

Your support of this bill is crucial, and we ask that you keep yourself and your legislators informed.



Bill Groves of Groves Electric



Johnny Groves, 3rd Generation from Groves Electric



Board member MaryEllen Evans of Trade Management with Charter Member Billy Neu of Neuco



First time visitor, Russell Payton of Contek Solutions



TOP 10 SINS MANAGERS COMMIT



Sin #1. Making Unlawful Pre-employment Inquiries

That's an interesting accent you have. Where were you born?

Do you have any children? If so, will you have any daycare problems?

Action: Watch inappropriate questions during interviews and other pre-employment contexts. When you use discriminatory questions, the courts assume you intended to use the answer as a factor in your hiring decision. Therefore, any questions about or references to protected categories like sex, age, race, national origin, or religion can later be used against you in a discrimination claim.

Sin #2. Delivering "Dishonest" Evaluations

I'm giving you a "satisfactory" rating and I think we both know what that means in this company. I gave her a "good" rating even though her work is poor, because I think a "poor" rating would be demotivating.

Action: Many managers avoid the discomfort of delivering a review that indicates poor performance and instead cop out with a "satisfactory" rating. Be honest with your assessment and document accurately.

Sin #3. Too Vague in Discipline and Performance Write-ups

Sally, your work could use improvement. I'm making a note here that we talked about your performance. Mike's poor performance is unacceptable, and I'm

just going to spell it out—he's lazy.

Action: Managers will often write something on performance evaluations like "needs improvement." That's too vague. Does it mean the employee did a great job, but there's always room for a little improvement, or does it mean that the employee did a terrible job? Words like "lazy" projects judgment and is vague. Give specific examples of the unacceptable behavior.

Sin #4. Making Rash Disciplinary Decisions

That's it, I've had it, you're fired.

Action: Ultimately, firing may be the appropriate thing to do, but instantly in anger isn't the way to do it. You should never fire without carefully reviewing the circumstances with HR. Suspend the employee while conducting an investigation before firing any employee. This allows you to evaluate the appropriateness of the punishment and its consistency with previous similar cases.

Sin #5. Making Uninformed Responses to Medical Leave Requests

You want what? You want 5 weeks of bonding leave during our busiest season? I don't think so. You're going to take every Friday off? That's not going to happen.

Action: Dealing with employee requests for medical leave can be frustrating, but managers have to curtail that frustration and respond professionally. Listen to the employee requests and tell them you will review with Human Resources.

Sin #6. Not Realizing the "Power" of the Management Position

Let's go out for a drink after work. Then maybe we'll grab dinner. I'm hoping everyone will contribute generously to my charity.

Action: Inviting an employee out for a drink after work may seem a simple gesture, but the subordinate may view it as an order. It may be viewed as coercion or harassment. Managers are agents of the company, and when they engage in behavior that may be considered harassment.

Sin #7. Not Knowing and Not Enforcing Policies

We're busy now. Talk to me about that harassment

business next week. If you think the work's not safe, you're free to quit any time. Nobody in this department can talk about salaries or benefits with other employees or outsiders, especially online.

Action: Managers are the front line for interpreting and enforcing the company's policies. If they don't know the policies and their associated responsibilities, it can be detrimental to the organization.

Sin #8. Making Wage/Hour Blunders

We're out of overtime. Can you clock out and then set up for tomorrow? You new recruits will be working alongside our regular employees, but you will all be independent contractors.

Tracy, make sure you stay close to the phone during lunch.

Sandy, keep your phone near you during the evenings for calls from the West Coast.

Action: Wage and hour should be simple but it just isn't. The most common problems are:

Overtime. You have to track it, pay it, and include bonuses in the "regular rate" for overtime calculations.

Off the clock. You have to pay for all hours worked, even if the employee volunteers and even if you've forbidden the employee to do work.

Misclassification. Many "independent contractors" are actually employees who need to be paid overtime. And many "exempt" employees have duties that do not meet the criteria for exemption.

Sin #9. Letting Problems Fester

Teresa's crossing the line with her behavior, but she surely knows it—she'll figure it out. Oh, that's just Jimmie. He means no harm—he's just "old school."

Action: With bad behavior, it's always tempting to ignore it in hopes that the behavior will improve on its own. But you know that's not going to happen. Unfortunately, as time goes by, you appear to be condoning the behavior.

Sin #10. Making "Side Agreements"

Stay after you clock out for the next 2 weeks until we get this job out the door, and I'll make it up to you by writing in extra overtime next month when the budget switches over. Take this transfer, and I'll guarantee you a promotion at the end of the year. I can't pay you for this extra work, but you and your spouse can go out for a nice dinner on the company account.

Action: Managers under stress may be tempted to make "side agreements" that either go against policy or consist of promises that likely won't be kept. Three problems arise with side agreements: They are illegal and there will eventually be lawsuits.

Employees will be left feeling that agreements haven't been honored.

Others who didn't get the special treatment or privilege may sue.

Reference: HR Daily (1/1/2014), 10 Sins of Well-Meaning Supervisors



Karen Ensley of Cutler-Smith



New Member Kay Vessels of Vessels Construction



Subcontractors Association of the Metroplex



Pete Snider, Executive Director
18 Falcons View Pass
Heath, Texas 75032

Phone: (972) 771-0188
Cell: (214) 908-9248
E-mail: execdir@sam-dfw.org



The Subcontractors Association of the Metroplex was founded with the purpose of creating an affordable forum for Subcontractors to exchange information and learn from each other how to be better business men or women.

Sam is a member of the National Subcontractors Alliance, the largest Subcontractors association in the USA, and also a member of the Association of Specialty Contractors where we have a voice in National Legislation. SAM is also a member of the Texas Construction Association, the unifying voice of the trades in the Texas Legislature and as such all SAM members have access to all the benefits of the TCA.

Sam is also allied with the National Federation of Independent Business who has a voice in the Texas Legislature on small business issues.

**Your Source for Subcontractor's
information.**



Visit us at:
<http://www.sam-dfw.org>



Our Association Officers

Paul Holden, Facility Construction Services
President and TCA representative

paulh@fcsdallas.com

James Mayhew, Apex Services, Inc. Immediate past President, B.P.I. Chair:

jmayhew@apexservicesinc.net

Gary Ardis, Anderson Asphalt and Concrete Paving, Vice President

gardis@andersonpaving.com

Member: Tim McSorley
Storage Equipment

tmcsorley@secdfw.com

Secretary/Treasurer: Carrie Edomm
Astro Sheet Metal

carrie.edomm@astrosheetmetal.com

Member: Selena Zarate
Groves Electric

selena@groveselectric.com

Member: Don Weempe
Master Construction and Engineering

dweempe@masterconstruction.com

Associate Representative:

Clem Lesch

PCL Contract Bonds

clesch@pclbonds.com

MaryEllen Evens, Trade Management

Associate Representative: Program and Membership Chair

mevans@trade-mgmt.com

Legal Counsel: Spike Cutler

Cutler-Smith, PC

scutler@cutler-smith.com

If you're not a member of SAM,
you should be.

Call Pete Snider for a membership
application.

(972) 771-0188

Cell (214) 908-9248 or email to:

execdir@sam-dfw.org



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