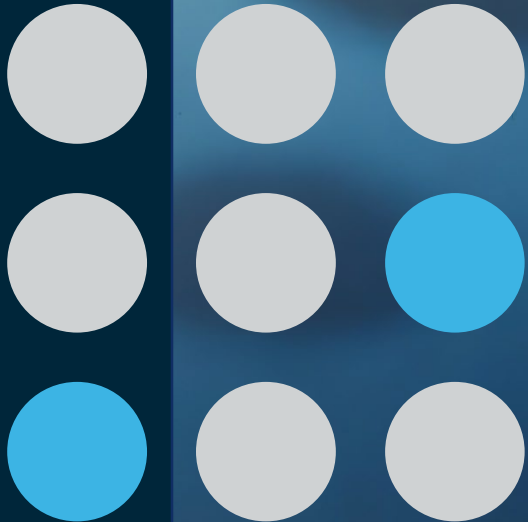


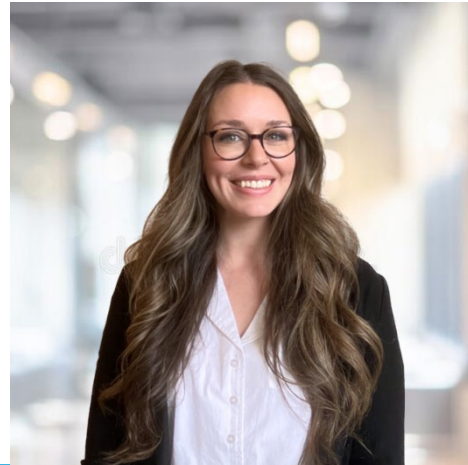
Overtime: What Employers Need to Know Today

November 7, 2024

Littler Compliance **HR**



Today's Webinar Host



STEPHANIE ZIELINSKI

Marketing Director

ComplianceHR

Who We Are



- Technology Platform
- Infrastructure enterprise



- Subject matter expertise
- Knowledge management team
- Case databases



What we do:
Deliver expert guidance in a fraction of time and cost vs traditional methods

Compliance **HR**



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Overtime

Determine if an employee is exempt or non-exempt



The Reference Center

A Comprehensive Solution for Employment Law and Common HR Compliance Questions



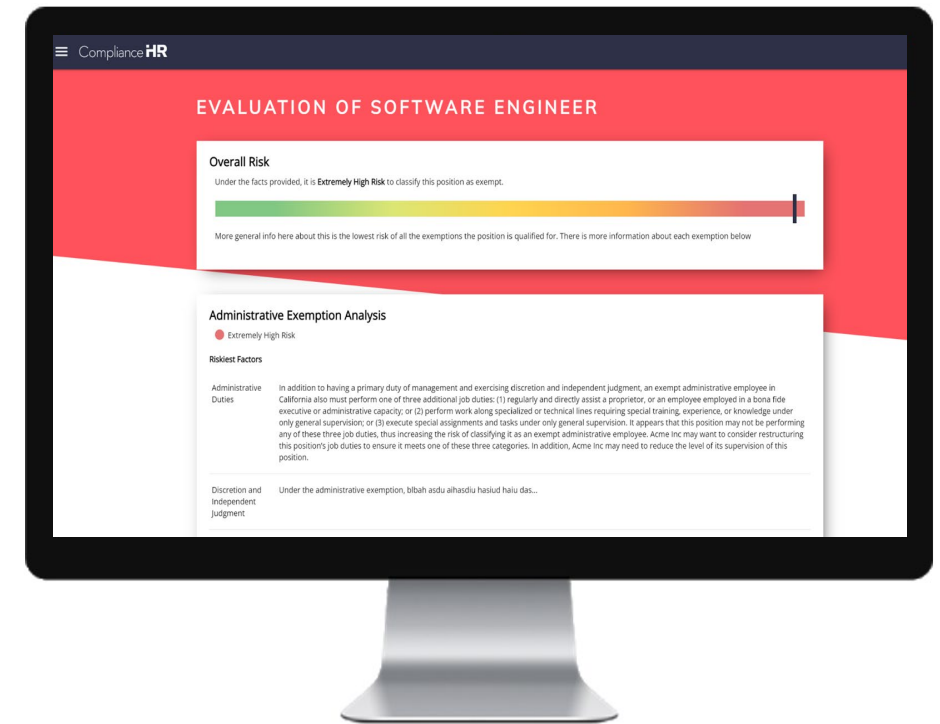
The Document Center

Efficiently generate state and federal compliant documents throughout the employee lifecycle



Navigator Overtime

- Determines employee as exempt or non-exempt
- Applies all applicable federal and state tests
- Draws from a proprietary engine of 2,400+ reported court decisions and DOL opinion letters
- Delivers reasoned suggestions on how to lower the risk of misclassification
- Provides the risk result, a summary of relevant federal & state exemption standards, and a transcript of answers



Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Visit our website: [Compliancehr.com](https://compliancehr.com)
3. Email our team at demo@compliancehr.com

Benefits of a custom demon:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

ComplianceHR Demo & Free Trial:

<https://compliancehr.com/webinar-demo/>

Resources

- [Compliance HR - Demo & Free Trial](#)
- [State-by-State CLE Guide](#)
- [BeaconLive - How to Access Certificates](#)

EVALUATION OF MANAGER C

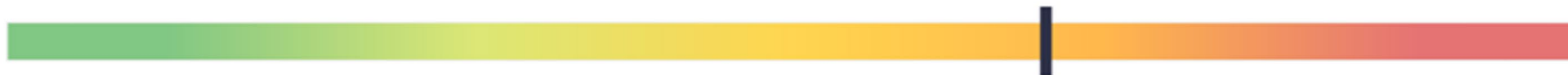


Report Summary

This is an evaluation of **Manager C** in **California** based on the questionnaire submitted by **worth+demo@compliancehr.com**.

Overall Risk

Without taking compensation into account, it is **Moderately High Risk** to classify this position as exempt.



This is the lowest risk of all the exemptions the position is qualified for. Learn more about compensation requirements and each exemption below.

Overall Compensation Requirements

Compensation Requirements Met

This position meets the relevant compensation requirements.

Analysis of the Administrative Exemption

Moderately High Risk

Compensation Requirements Met

Riskiest Factors

Discretion and Independent Judgment To qualify for the administrative exemption, a position must exercise discretion and independent judgment on matters of significance. The exercise of discretion and independent judgment involves comparing and evaluating possible courses of conduct and acting or making a decision after the various possibilities have been considered. The exercise of discretion and independent judgment implies the position has authority to make an independent choice, free from immediate direction or supervision. Discretion and independent judgment does not require that the decisions made by a position have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that a position's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the position is not exercising discretion and independent judgment. However, the exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques,

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Discrimination Lawsuits– A Comparison

Typical Lawsuit:

- Single Employee
- Back Wages / Maybe Front Pay
- \$10,000 - \$50,000 Typical Exposure Because of Mitigation
- Punitive Damages & Emotional Distress Capped at \$300,000
- Cases Typically Settle for \$5,000 - \$25,000
- Impacts a Few Supervisors and Employees, a Few HR Personnel
- Burden on Employee to Prove
- A Few Depositions
- A 2-3 Day Trial



FLSA Lawsuits – A Comparison

Typical Lawsuit:

- 100s or 1000s of Employees (or Independent Contractors)
- 3 Years Back Wages Plus Equal Amount in Liquidated Damages
- Only Need One Employee to Start Litigation
- Full Exposure Typically Range in 7, 8 and 9 Figures (Think \$545,000,000).
- Cases Typically Settle in Six and Seven Figure Range
- Automatic Attorneys Fees
- Exemption and Record Burdens on Employers

Most Prevalent Types of Wage/Hour Liability

- Not paying overtime
 - Misclassified as exempt
 - Direction to not pay overtime
 - Miscalculation of overtime
- Not paying minimum wage
- Not paying all hours worked

- **Federal law looks back 3 years...**
- **Some states have much longer...**



Chief Exemptions

- Executive
- Administrative
- Professional
- Highly Compensated “Exception”
- Computer
- Outside Sales
- Motor Carrier Act
- Retail Sales 7(i)
- Burden of Proof on Employer

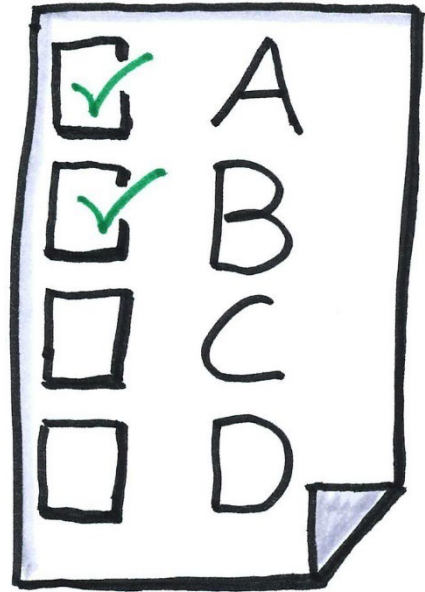


Highly Compensated Everywhere?

Highly Compensated Employee Overtime Exemption

Can Reasonably Rely on FLSA Exemption (34 States + D.C.)				
Alabama	Alaska (Per DOL)	Arizona	Arkansas	Delaware
District of Columbia	Florida	Georgia	Idaho	Indiana
Iowa	Kansas	Kentucky	Louisiana	Massachusetts
Michigan	Mississippi	Missouri	Montana	Nebraska
Nevada	New Hampshire	New Jersey	North Carolina	North Dakota
Ohio	Oklahoma	South Carolina	South Dakota	Tennessee
Texas	Utah	Virginia	West Virginia	Wyoming
FLSA Exemption Application Is Unclear (3 States)				
New Mexico	Rhode Island	Vermont		
State-Specific Exemption (3.5 States)				
Colorado	Connecticut (Mortgage Loan Originator)	Hawaii*	New York*	*Exemption is not HCE-specific but might otherwise be exempt under state law.
Cannot Use FLSA Exemption (9.5 States)				
California	Connecticut (Generally)	Illinois	Maine	Maryland
Minnesota	Oregon	Pennsylvania	Washington	Wisconsin

Tests for Exemptions



- Compensation Test
 - Minimum level of compensation – Salary Level
 - Type of compensation – Salary Basis
- Duties Test
 - Job duties, responsibilities and authority of the employee

Minimum Salary Level

- As of July 1, 2024, for the executive, administrative and professional exemptions, employees must have been paid at least \$844 per week (\$43,888/year) on a “salary basis.”
- Exceptions:
 - No compensation requirements for outside sales, doctors, lawyers and teachers
 - Computer employees may also be paid on an hourly basis of at least \$27.63 per hour
 - Commissioned employees of retail or service establishments
 - Administrative and professional employees may be paid on a fee basis
- Prior to July 1, 2024, the salary level had been set at \$684 a week.
- The highly compensated exception requires an annual salary of \$132,964.

Minimum Salary Level – Upcoming Change

- On January 1, 2025, the minimum salary level for the executive, administrative and professional exemptions rises to \$1,128 a week (\$58,656/year).
- The highly compensated exception salary level rises to \$151,164 per year.
- The salary level is reset (increased) every 3 years automatically.
- Multiple challenges in the Fifth Circuit (Texas) to the upcoming January rule. Employers hope to stop the rule.
- A hearing is scheduled for tomorrow, Friday, Nov 8 at 10 am in one of these cases.

Prepare for Regulations

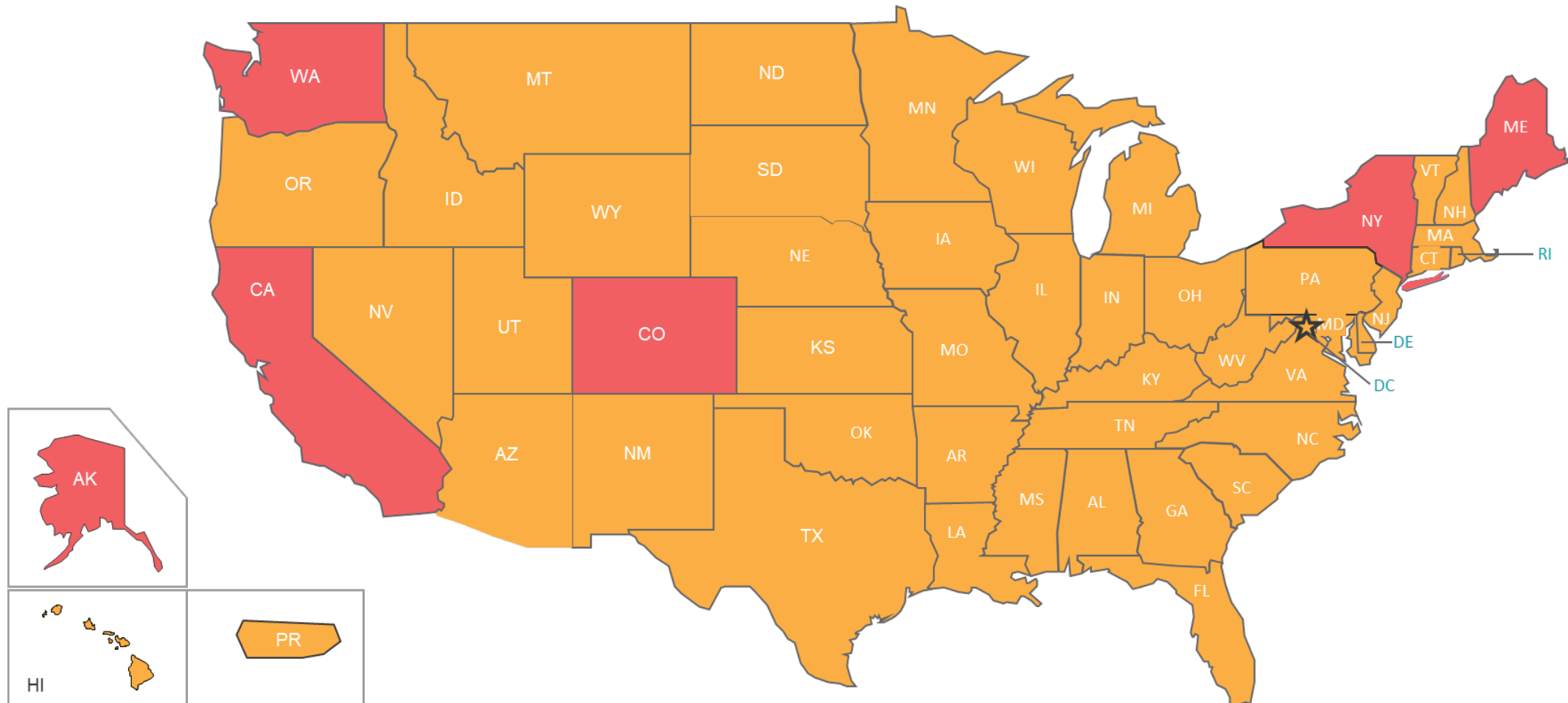


- Don't wait for court rulings.
- Start reviewing exempt status of employees based on:
 - Salary increase to \$58,656 and \$151,164+ for HCE
- Assess whether to increase salary or reclassify?

Reclassification Process

- The Reclassification Decision: Salary
- Pull salary and incentive pay data for all employees earning below the minimum
- Calculate the cost of increasing salary to the minimum
- Calculate the cost of overtime:
 - $(\text{Weekly salary} / 40 \text{ hours}) * 1.5 * \text{expected overtime hours}$
- Consider a cost-neutral solution
 - $\text{Weekly Salary} / (40 \text{ hours} + (\text{OT hours} * 1.5))$

States with Higher Salary Level than FLSA



Deductions for Exempt Salary Workers?

Only:

- Full day deductions for personal reasons
- Full day deductions if you have a bona fide sick leave policy
- Smaller increments if qualifying FMLA leave
- Offset for jury, witness, or military pay
- Penalties imposed for violations of major safety violations
- Unpaid disciplinary suspensions of one or more full days related to violation of work rule
- First and last week of work

Primary Duty

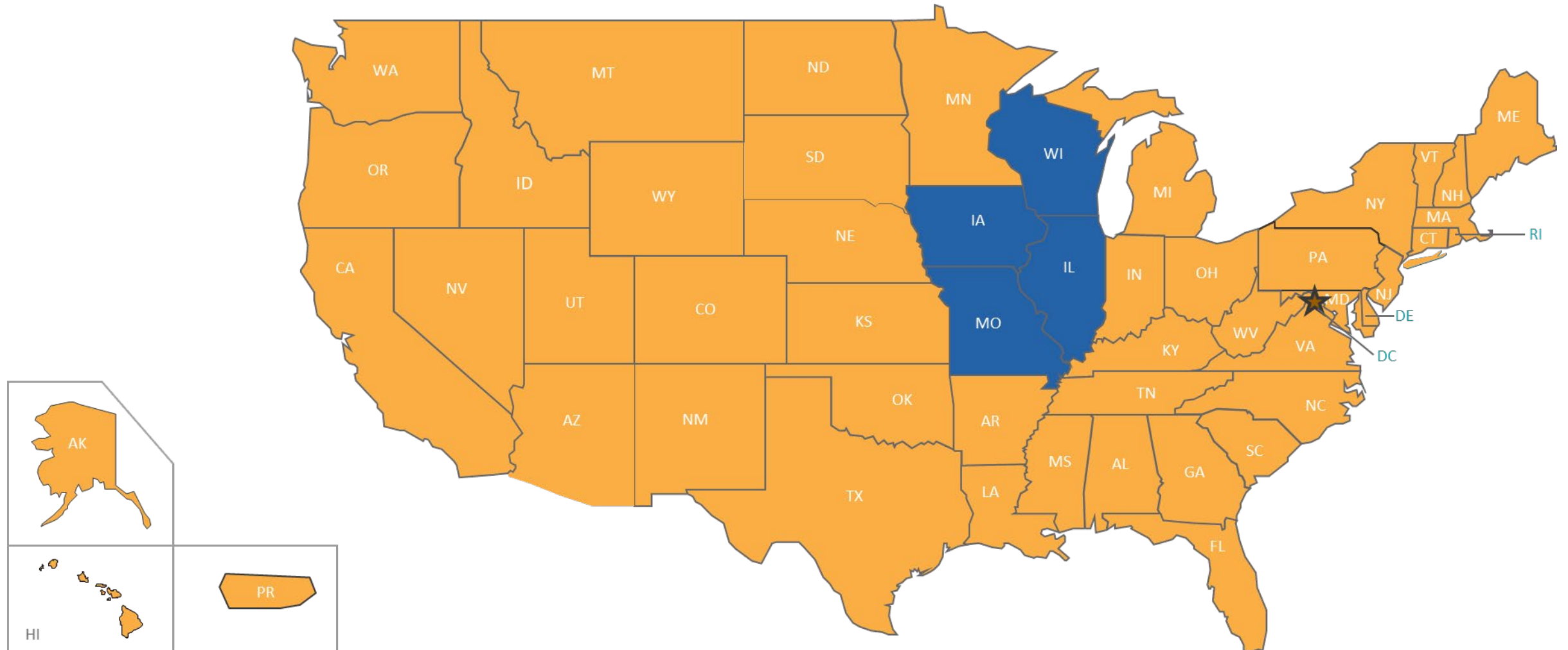
- The principal, main, major or most important duty that the employee performs.
- Factors to consider include, but are not limited to:
 - Relative importance of the exempt duties;
 - Amount of time spent performing exempt work;
 - Relative freedom from direct supervision; and
 - Relationship between the employee's salary and the wages paid to other employees for the same kind of nonexempt work.

Primary Duty



- Employees who spend more than 50% of their time performing exempt work will generally satisfy the primary duty requirement
- However, the regulations do not require that exempt employees spend more than 50% of time performing exempt work

EAP Exemptions Limit Nonexempt Work to 20%!



Executive Exemption - Duties

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision;
- Customarily and regularly directs the work of two or more other employees; and
- Authority to hire or fire other employees or whose suggestions and recommendations as to hiring, firing, advancement, promotion or other change of status of other employees are given particular weight.



Administrative Exemption Duties

- Whose primary duty is 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
- Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.



Learned Professional Exemption Duties

- The employee's primary duty must be the performance of work requiring advanced knowledge
- In a field of science or learning
- Customarily acquired by a prolonged course of specialized intellectual instruction



Creative Professional Duties

- 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



Computer Employees



- Primary duty must consist of:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs based on and related to user or system design specifications;
 - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

- There are no salary requirements for exemption as an outside sales employee
- Duties test
 - Primary duty of making sales or obtaining orders/contracts
 - Customarily and regularly engaged away from the employer's place of business in making sales or obtaining orders/contracts



Overtime

Fair Labor Standards Act:

- Covered employers must pay non-exempt employees at least the federal minimum wage for all hours worked and overtime of 1 ½ times the employee's regular rate of pay for hours worked over 40 in a workweek

Overtime

Overtime (Generally Applicable Laws)

No Overtime Law (18 States)				
Alabama	Arizona	Delaware	Florida	Georgia
Idaho	Iowa	Louisiana	Mississippi	Nebraska
Oklahoma	South Carolina	South Dakota	Tennessee	Texas
Utah	Virginia*	Wyoming		
Daily Overtime for Working More than 8 Hours (3 States)				
Alaska (Day)		California (Day)		Nevada (Day or Consecutive)
Daily Overtime for Working More than 12 Hours (2 States)				
California (Day) (2x)			Colorado (Day or Consecutive)	

Overtime

Other Premium Pay

Work on 7th Day in Workweek (General Rule – Exceptions May Exist) (2 States)	
California	Kentucky
Work on Sunday (General Rule – Exceptions May Exist) (2 States)	
Massachusetts (Retail)	Rhode Island
Work on (Certain) Holiday (General Rule – Exceptions May Exist) (2 States)	
Massachusetts (Retail)	Rhode Island

The Regular Rate

- All “remuneration for employment” paid to an employee in a workweek divided by all hours worked in the workweek



Remember the Formula

All Remuneration

÷

All Hours Worked

Compensation Included in OT Calculation

- Hourly wages or salary
- Commissions
- Non-discretionary team awards
- Prizes and awards related to work
- Shift or job differentials
- On-Call pay
- Gift cards
- RSUs?



Compensation Excluded in OT Calculation

- Employee benefits
 - Wellness programs, gym access, employee discounts
- Payments for time not worked
- Business expense reimbursements: Need not be solely for employer benefit.
- Certain premium pay
- Gifts for Christmas or special occasions
 - Over \$25 creates tax obligations
- Discretionary team awards
- Vacation, sick or holiday hours also do not count toward determining whether an employee worked more than 40 hours in the week

Armoring and Auditing

- Job descriptions:
 - Can undermine or support an exemption.
 - Use self-assessments to reinforce exempt duties annually.
 - Use job descriptions to show weight of primary duties that bolster job descriptions.
 - Be weary of over-populating job descriptions with micro-non-exempt duties.

Armoring and Auditing

- Budget and plan review of:
- Regular rate mathematics
- Pay codes and whether they are, or are not, in regular rate calculation
- Overtime exemptions. Criteria to consider:
 - EAP Exemptions under \$85,000 annually.
 - EAP Exemptions with unique compensation arrangements.
 - EAP Exemptions with few supervisors, or large number of peers.
 - Exempt sales employees.
 - Exempt workers with blue collar or manual duties.
 - Has remote work changed position profile since last audit?

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1. Reply “Yes” to the on-screen poll
2. Visit our website: [Compliancehr.com](https://compliancehr.com)
3. Email our team at demo@compliancehr.com

Benefits of a custom demon:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

ComplianceHR Demo & Free Trial:

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Resources

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- [State-by-State CLE Guide](#)
- [BeaconLive - How to Access Certificates](#)

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Questions?

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Thank You



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