

Solid Employee Manual: Take back the driver's seat on overtime claims

Overtime lawsuits alleging that you misclassified a position as salaried exempt follow a common path—the plaintiff's lawyer always hands you a huge tab. What the lawyer doesn't tell you is that he crunched his numbers using the method that spits out the highest liability. There's a better way.

Misclassification liability might instead be calculated with the fluctuating workweek method. Applying this method normally reduces liability by 60-70%. That deflates a plaintiff's lawyer pretty quick, putting you in the driver's seat to broker a settlement deal.

In *Tolentino v. C&J Spec-Rent*, a federal court in Houston's backyard endorsed the fluctuating workweek method. The plaintiff employees admitted that they had received a fixed salary and understood their hours would vary without any additional overtime pay. With that admission, the court ruled that the more company-friendly liability model applied. But what if the plaintiffs hadn't admitted this obvious truth about their salary during the lawsuit?

Your company's employee manual should nail down the admission long before a plaintiff's lawyer gets involved. Your manual should say that salaried employees understand their salary will be their only pay for all hours worked. Carefully wording this part of the employee manual is critical to triggering the fluctuating workweek method. And it is your most fundamental line of defense.



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