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ASK A LAWYER

**'Non-exempt'
workers entitled
to overtime pay**

Q. Does a New Jersey employer have to pay its employees overtime and, if so, under what circumstances?

Under New Jersey and federal law, an employer, regardless of size, must pay its "non-exempt" employees overtime at the rate of 1½ times the employee's "regular hourly wage" for all hours worked beyond 40 in a particular week.

In calculating whether an employee has reached the requisite 40 hours of working time, an employer only counts the hours actually worked by the employee during the week. Hours that are attributable to vacation, sick or personal time are therefore not included in the calculation.

In addition, many employees will fall into "exempt" categories and, therefore, are not entitled to overtime. The most common exemptions are termed the "white collar exemptions," which provide that "executive," "administrative" and "professional" employees are not entitled to any overtime pay as their salary compensates them for all time worked.

Although each exemption has its own particular requirements, generally, an employee will be considered "exempt" from overtime if he/she (1) meets the "salary basis test" by receiving a certain salary as compensation each pay period regardless of the number of hours actually worked in that period and (2) satisfies the "duties" requirement by having managerial responsibilities and regularly using his/her discretionary powers.

Other categories of exempt employees include outside salespersons, computer professionals, farm laborers, hotel employees, employees of a common carrier of passengers by motor bus, limousine drivers and employees engaged in labor relating to the raising or care of livestock.

Randi Kochman is a member of the employment law department of Cole, Schotz, Meisel, Forman & Leonard P.A., the largest law firm in Bergen County. She can be reached at rkochman@coleschotz.com, or 201-525-6309. This is not intended to be legal advice, which can be given only after the attorney understands the facts of a particular matter and the goals of a client. Do you have a business question for a lawyer? Send it to businessnews@northjersey.com.