



Am I Entitled To Overtime?

by Bruce B. Green

It is late Friday afternoon. The project you've been working on all week is far from done. You'll be working late again tonight. The weekend will be spent in the office, and not at the side of a pool. To make matters worse, you're paid on a salary basis and therefore not entitled to overtime - right? Not so fast.

Federal wage and hour law requires most employers to pay overtime wages to employees who work in excess of 40 hours per week. An employee's overtime rate is one and one-

half (1½) times his or her regular hourly wage. This overtime requirement is mandatory unless an employee falls within one of the overtime exemptions recognized by law. The most common of these exemptions are bona fide executives, administrators and professionals. These exemptions are commonly known as the "white collar" exemptions.

To fall under the white collar exemptions from overtime, an employee must be paid on a salary (or fee) basis and perform exempt tasks. Being paid a salary is not enough. The employee must also have as his

or her primary duty the performance of exempt work.

For managerial employees, this means the management of a business enterprise, or a customarily recognized department or subdivision of the business. For administrative employees, this means the performance of non-manual work that directly relates to management policies or general business operations. It also requires the exercise of discretion and independent judgment.

Exercising discretion and independent judgment requires

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What to do When Stocks are Down

by Douglas D. Murray

Are you tired of watching your stock portfolio decrease without gaining any tax benefit from your "paper losses"? Here are a couple of ideas for taking advantage of these losses.

ROTH IRA: If you hold stocks or equity mutual funds in a traditional IRA, you may want to consider converting it into a Roth IRA while the market is

down. Remember that with a Roth IRA you make after-tax contributions (i.e., you do not get a tax deduction like you do with a traditional IRA). However, your earnings within a Roth IRA are tax-free. By comparison, all withdrawals from your traditional IRA will generally be taxable when you receive them.

The downside in converting a traditional IRA to a Roth IRA is that the amount converted will

be taxed in the year of conversion. However, you can obviously save a significant amount of income taxes if you convert your traditional IRA to a Roth IRA while your investments are down in value. This could be an especially good time for such a conversion if you expect to have unused net operating losses and/or tax credits available on your personal return in 2002. In that

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Businesses Benefit from Special Depreciation Allowance

by Robert B. Lundholm

The tax-cut bill passed earlier this year includes several provisions designed to help boost the economy. One provision is a special 30% first-year depreciation bonus for newly acquired business assets.

In order to qualify, assets must be placed in service after September 10, 2001, and before September 11, 2004. Assets may also qualify if they are acquired under a binding, written agreement entered into during this time period. However, assets acquired during this time period under a binding, written

contract entered into prior to September 10, 2001, will not qualify.

This special depreciation allowance is limited to new assets. Used assets, the original use of which does not commence with the taxpayer, will not qualify for the 30% depreciation bonus.

Thirty percent (30%) of the adjusted basis of the qualified property can be deducted up front in the year it is placed in service. The remaining 70% of the adjusted basis will be deducted under the regular depreciation schedule. This depreciation bonus can be used

on assets that have been partially expensed under §179, and any basis not deducted is eligible for the 30% depreciation bonus.

Buyers of cars and light trucks used in business also benefit under the new law. The maximum depreciation deduction on a car or light truck has been increased from \$4,500.00 to \$7,600.00.

You should meet with your attorney to see how this new law affects you. Discussing these new provisions with your attorney prior to the end of the tax year could save you a significant amount in taxes.

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case, the amount converted could be offset by the losses and/or credits that may otherwise go unused. Please consult with your tax advisor for more specific details on this issue.

SALE AND BUY-BACK OF STOCKS:

While income tax considerations should never control your investment decisions, you may want to sell some of your stocks and/or mutual funds that have lost value in order to take a capital loss on your personal return. Each year, you can deduct capital losses to the extent of capital gains plus an additional \$3,000.00. Any remaining losses may then be carried forward.

Since many people are leery of jumping out of the market when

it is down, you may be tempted to sell your devalued stock and then purchase it back right away. However, the IRS will not allow you to deduct the loss when you purchase the same stock within 30 days of — before or after — the sale.

Thus, if you think that the market will remain steady or decrease during the next 30 days, you can sell your stock and take the resulting capital loss as long as you do not buy back the same investment within the next 30 days. In other words, if you sell your stock today and then buy it back 31 days later, you will have essentially “cashed out” your loss while leaving your original investment intact — that is **assuming** the value of the investment did not increase during this 31-day waiting

period. On the other hand, if you think the market will go up during the next 30 days, you could reverse the transaction, e.g., rather than selling the stock first, you could buy replacement shares today and then 31 days later sell your original shares allowing you to deduct the loss realized. Again, you have cashed out your loss while leaving the original investment intact.

Either way, this can be a risky proposition depending upon the market conditions during the waiting period, and, of course, if the stock is a “dog” you may simply want to sell it outright and cut your losses altogether. You should consult carefully with your investment advisor before making any such investment decisions.

A Risky Call: Employee Cell Phone Use Raises Liability Issues

by Brett Ryan

Cellular telephones have become as much a part of modern life as the automobile. Many of us travel with a cell phone in case of an emergency or for the sake of convenience. However, recent legal events have raised the possibility that if cellular phones are provided by an employer, or if cellular phone usage is a necessary component of a job, employers can be liable for problems created by employees' cell phone use while driving.

A number of states and municipalities have recently enacted laws that regulate the use of cell phones in automobiles. These laws generally require a "hands free" device to operate a cell phone while driving. See, e.g., New York Vehicle and Traffic Code §1225-c (prohibiting hand-held cell phone use while driving on any public highway). Further, a bill introduced (but not enacted) in the Senate in 2001 proposed withholding federal highway funds from any state that did not enact similar legislation.

These changes in the laws create a position where employers could be held liable for accidents of employees who use cell phones while driving. Recently, in Virginia, a law firm employee who was driving home from a client meeting while talking to the client on her

cell phone hit what she believed to be a deer. Unfortunately, she actually struck a 15 year-old girl walking on the road, who later died from injuries.

The girl's family has sued the law firm under the legal theory of "respondeat superior," alleging that the law firm should be liable for her wrongful death because the firm did not take public safety into consideration when it encouraged and profited from its employee's use of her cell phone. The lawsuit seeks \$30 million in damages from the firm.

A similar case arose in Georgia where a stockbroker for Smith Barney was driving and making "cold calls" (sales calls to potential clients) when he hit and killed a 24 year-old motorcyclist, a father of two. Some Smith Barney employees testified that making "cold calls" on personal time, and even on a personal cellular phone, was often required of a stockbroker in order to make contact with hard-to-reach individuals. The company decided to avoid the potential risk that an impassioned jury might create. Instead of taking the case to trial, Smith Barney offered the victim's family a \$500,000.00 settlement so that it would have a guaranteed cut-off on damages.

This potential legal liability forces employers to think long and hard about whether they

should condone cell phone use by their employees, and if so, under what circumstances. For businesses where employees spend a substantial amount of time commuting or traveling on business, there obviously are significant advantages to employees using cell phones.

An employer should create an official, written policy on employee cell phone use. Those employers who do not want their employees using cell phones for business purposes should have policies that clearly state a prohibition on such use. For employers who condone employee cell phone use, the policy should take into account particular circumstances, such as whether they want their employees talking on their cell phones for business purposes while driving. If the answer is "no," then the official written policy should so state in very certain terms. If the answer is "yes," the employer may wish to mandate the use of hands-free devices. Finally, the employer may also wish to preclude cell phone usage while driving in traffic, during adverse weather, and other low-visibility conditions.

The official written policy should be developed with the help of experienced counsel in this legal area, and it should be distributed to and signed by all employees.

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more than applying specialized knowledge or skill. Rather, it involves the determination of the nature of problems, the evaluation of data, and responses or solutions to problems. It also implies that the employee has the authority or power to make independent choices, free from immediate direction or supervision, on matters of significance.

If an employee is paid on a salary basis, but does nothing more than office production work or bookkeeping, he or she is normally not exempt and is entitled to overtime. Furthermore, if an employee lacks the authority or power to make independent choices, free from immediate direction or

supervision, he or she is also entitled to overtime. As the Department of Labor has noted, employees who simply handle telephone calls and incoming correspondence, copy and type letters and memos, schedule appointments and maintain a filing system are not exempt from federal overtime requirements. They are entitled to overtime, even if paid on a salary basis.

If you are paid on a salary basis, but are not performing work that (1) is directly related to management policies or general business operations and (2) involves the exercise of discretion and independent judgment, you should contact your lawyer for further details.

New Attorney

Willson & Pechacek, P.L.C. announces that Jamie L. Cox has joined the law firm as an associate attorney. Jamie is a 1994 graduate of Wapello High School in Wapello, Iowa. After earning his bachelor's of art degree in sociology and history with honors from the University of Iowa in May of 1998, Jamie received his J.D. from the University of Iowa College of Law in May of 2001. He is a member of the American, Iowa State and Pottawattamie County Bar Associations, and is practicing in the area of civil litigation. Jamie is also the Editor of the Willson & Pechacek, P.L.C. Newsletter.

Willson & Pechacek, P.L.C.

Newsletter

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