

NEWS & INSIGHTS

Are funeral directors exempt from overtime?

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Questions frequently arise about whether funeral directors may be classified as exempt from overtime. Under the Fair Labor Standards Act (FLSA) - the federal law that governs wage and hour issues as it relates to employees - the answer is yes, under certain circumstances.

The FLSA requires employers to pay employees overtime at a rate of 1.5 times their hourly rate for all hours worked in excess of 40 per week. However, the FLSA also sets forth certain exemptions applicable to some employees based on their job duties. Specifically, employers may not be required to pay certain employees overtime under the executive, learned professional or administrative exemptions. Funeral directors may fall under one (or more) of

these exemptions.

Learned professional exemption

Funeral directors are most often to be exempt from overtime under the learned professional exemption. For this exemption to apply, the employee's work must require advanced knowledge, in a field of science or learning that was acquired by a prolonged course of specialized intellectual instruction. The employee must also be paid on a salary basis of at least \$35,568 per year.

Specific to funeral directors, the regulations of the Department of Labor (DOL) which enforces the FLSA, provide that:

Funeral directors and embalmers who are licensed by and working in a state that requires successful completion of four academic years of pre-professional and professional study, including graduation from a college of mortuary science accredited by the American Board of Funeral Service Education, generally meet the duties requirements for the learned professional exemption.

In passing this regulation in 2004, the DOL explained that 16 states required at least two years of college credit, in subjects like chemistry, anatomy, pathology, business management, social sciences, law and ethics, plus graduation from an accredited college of mortuary science, which requires two years of study. The DOL acknowledged, however, that one state, Colorado, had no educational or licensing requirements for funeral directors, that five states required funeral directors to have only a high school education, and that remaining states fall somewhere in between. The DOL concluded that some funeral directors, such as those in the 16 states requiring four years of study, generally meet the duties requirements for the learned professional exemption, but that other employees with the title of funeral director, such as those in Colorado and the five states that required only a high school education, do not.

This leaves unanswered the question of whether funeral directors in the remaining states meet the duties requirements of the exemption. For example, Pennsylvania requires only two years of college and one year of mortuary school.

Cases from other states hold that funeral directors still may qualify under this exemption even if less than four years of education is required. Courts in Texas, Illinois and New York have all found, based on their specific job duties, that funeral directors were exempt as learned professionals despite the fact that they did not meet the strict educational requirements. In an Illinois case, the court held that the funeral director was exempt because he had to be licensed by the state and, to become licensed, he had to complete one year of mortuary science school and two years of college, including classes such as chemistry and psychology; take national board tests covering embalming, pathology, anatomy, and cosmetology; practice as an apprentice for one year; and pass an examination given by the state.

If a Pennsylvania funeral director's education meets Pennsylvania's requirements and they are paid on a salary basis, Pennsylvania employers have a strong argument that such employees are exempt from overtime through to the learned professional exemption.

Executive exemption

Funeral director employers could also potentially avail themselves of the “executive exemption.” Employees would qualify for this exemption if:

- They are paid on a salary basis of in excess of \$684 per week (this number may rise in 2023)
- Their primary duty must be managing the “enterprise” (which probably could encompass the specific funeral home)
- They “customarily and regularly” direct the work of at least two or more other full-time employees or their equivalent (such as one full-time and two part-time employees))
- They have the authority to hire or fire other employees, or their suggestions about these issues are given significant weight

Assuming that a funeral director meets the salary requirement (at least \$35,568 annually), whether they qualify for this exemption will depend on whether they actually manage at least two other employees and have authority or significant influence over personnel decisions. It may be that some funeral directors meet these requirements, but not others.

Administrative exemption

Employers are cautioned in overusing the “administrative exemption” because it is the most highly scrutinized by the DOL. To qualify for the administrative employee exemption:

- The employee must be paid on a salary basis of at least \$684 per week
- The employee’s primary duty must be the performance of office or non-manual work “directly related to the management or general business operations of the employer” (any employee who performs physical or “blue collar” work will not be exempt)
- The employee’s primary duty includes “the exercise of discretion and independent judgment with respect to matters of significance.”

Given the potential amount of physical labor involved with things like removals, embalming and body preparation, running services, and maintaining the funeral home and vehicles, it is questionable whether funeral directors would qualify for the administrative exemption.

If you are a funeral home owner with questions about the overtime qualification status of your employees, please contact [Rick Hackman](#), [Jason Benion](#) or any attorney in the [Saxton & Stump Death Care Group](#).

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