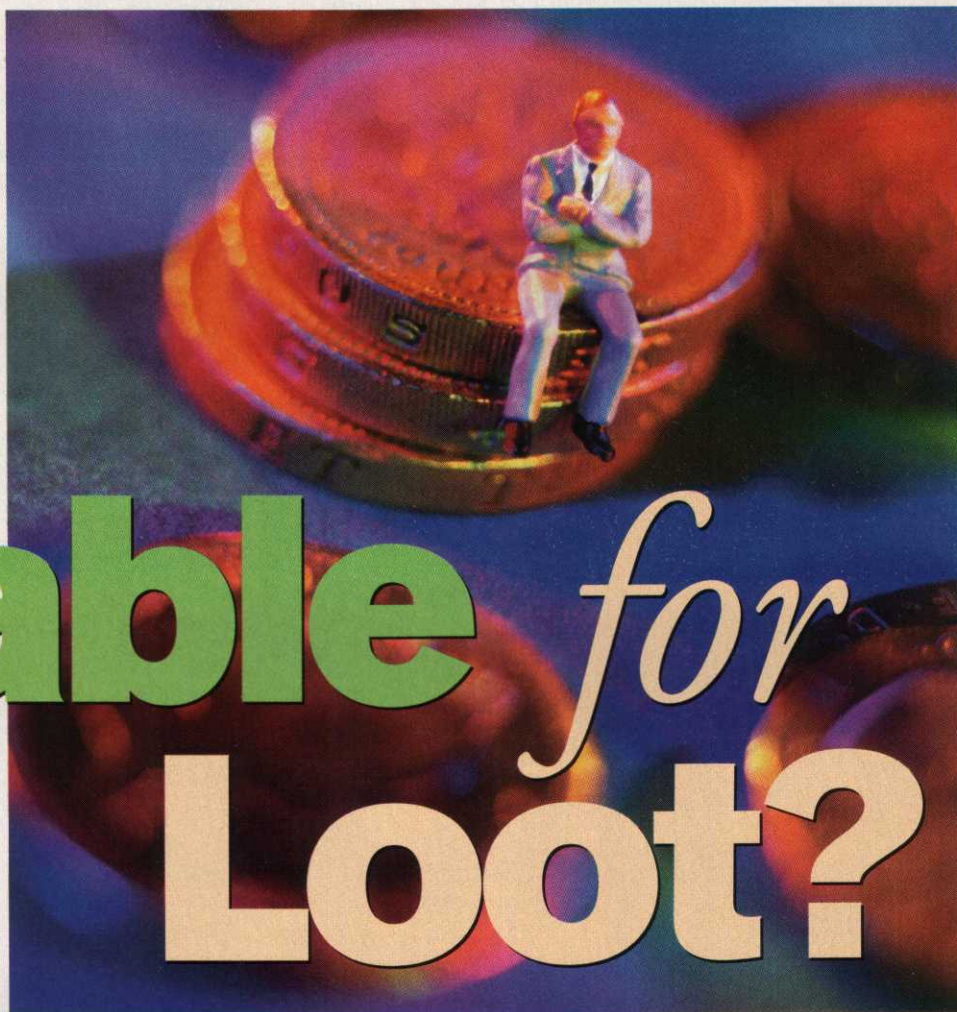


Sorting through the overtime issue

Liable *for* Loot?

BY RAYMOND G.
CORDELLI



If you're like many superintendents, you pay your assistants about \$400 a week for 60 hours of work. Your assistants are just happy to be in the golf business, and you're happy to have them — especially when they work for peanuts.

But while everyone is happy, you may be breaking the law. Many superintendents and their owners are unknowingly shorting their assistants' paychecks illegally. According to the U.S. Department of Labor's Wage and Hour Division, employees must be paid at least the federal minimum wage of \$5.15 per hour — or state minimum wage if higher — for all hours worked. They must also be paid time and a half their hourly rate for hours worked over 40 in a week, states the division's Fair Labor Standards Act.

The FLSA was enacted in 1938, and golf courses have been subject to its regulations for more than 35 years. But a golf course may qualify for an FLSA exemption if it meets one of the following criteria:

- It doesn't operate for more than seven months in any calendar year and engages only in maintenance operations during off-months.
- Its average receipts for any six months (not necessarily

consecutive) of the preceding calendar year weren't more than 33.3 percent of its average receipts for the other six months.

The only other way a worker may be exempt from the FLSA is if he or she meets all of the following salary and duty requirements:

- He or she must earn a minimum salary of \$250 a week.
- He or she must supervise two full-time employees.
- He or she must spend more than 50 percent of primary duties in a supervisory capacity.

Contrary to what many think, an assistant superintendent is not exempt from overtime pay simply because he or she is paid a salary rather than an hourly rate or merely because management deems the person's work to be important. Only individuals who fit within an exemption from the FLSA's overtime requirements may be paid on a no-overtime basis.

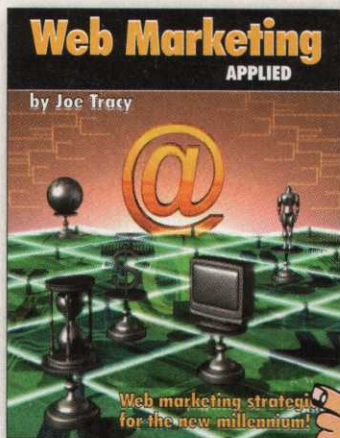
The most commonly known exemptions are those applying to executive, administrative and professional employees. Each of these exemptions requires that specific duties-related criteria be present. These factors must be met by each employee for whom an exemption is claimed. It is management's burden to prove that an exemption applies.

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Liabile for Loot?

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The work-related criteria must be detailed. For example, the duties of exempt executive employees must involve: (1) supervising two or more full-time employees or the equivalent; and (2) devoting their principal duties to the management of a business or of a customarily recognized subdivision or department of a business. However, depending upon the salary level of the person under consideration, the analysis of exempt status even under this one provision can necessitate an evaluation of about 15 pages of small text print in the *Federal Register*, as well as an assessment of interpretive opinion letters and court cases.

While salaried status alone doesn't relieve the obligation to pay overtime, almost all employees for whom one of these exemptions is asserted must be paid on a salary basis. The fundamental requirement is that a guaranteed, fixed amount of money be paid for every work week in which the employee performs any work. The salary generally can't be docked based either upon how much the employee works or upon deficiencies in the person's performance.

The minimum salary basis amounts were established in 1975 and have not been increased since. For executive and administrative employees, the minimum salary is \$155 a week; the minimum is \$170 a week for professionals. At a level of at least \$250 a week, the duties-related test are somewhat less burdensome for the employer to provide.

Employers who rely upon executive or administrative exemptions should immediately ensure that the duties test are satisfied and make certain that the salary basis exists.

The assistant superintendent is usually paid on a salary basis and is typically defined as the second in command of a golf course maintenance operation. This person is usually responsible for a crew of three or more employees and for a specific task or assignment to be completed on the course. However, in most cases, the assistant will work with the employees he or she is responsible for on this specific task.

If the assistant operates the backhoe, gets into the ditch to lay pipe, mows the fairways or greens, or does whatever is needed to get the job done, he or she is performing the same work as the employees he or she is supervising. The assistant is a working supervisor and/or lead person in accomplishing the task. So in many cases, the assistant superintendent can't qualify for the executive exemption. That means he or she is subject to overtime pay.

FLSA's intent isn't to confuse anyone or make life difficult for superintendents. It's simply a way to make sure workers get what's coming to them. ■

Raymond G. Cordelli is a federal labor law consultant in Hedgesville, W.Va. Previously employed by the Department of Labor's Wage and Hour Division for more than 36 years, he advises those unsure of their compliance status to contact their accountants or attorneys. Cordelli is available at 304-754-4294.