NAVIGATING FLSA OVERTIME EXEMPTIONS IN AI-INTEGRATED POSITIONS

Date: 30 September 2025

US Labor, Employment, and Workplace Safety Alert

Over the past two years, the use of artificial intelligence (AI) by employees—especially within white-collar professions—has surged, with nearly twice as many workers now relying on AI tools for a portion of their daily tasks.[1] This rapid growth is transforming routine workflows and the very contours of job responsibilities, as professionals leverage AI not only for analysis and reporting, but also decision support and automation of complex processes. While responsible AI use in the workplace may mean more efficiency and accuracy, it can also complicate employee classification under the Fair Labor Standards Act (FLSA). This alert considers how the integration of AI with an employee's job duties may impact a position's FLSA overtime exemption status.

FLSA OVERTIME EXEMPTIONS

All US employees must be classified as either “exempt” or “non-exempt” from the overtime pay requirements of the FLSA.[2] If an employee is “non-exempt”, they are entitled to minimum wage and overtime pay for hours worked in excess of 40 in a workweek. To qualify as “exempt”, employees must satisfy the FLSA's salary threshold[3] and meet certain tests regarding their job duties. For example:

- The administrative exemption requires, among other things, the exercise of independent judgment and discretion over matters of significance;
- The executive exemption requires, among other things, authority over personnel decisions, such as hiring, supervision, discipline, promotion, and termination; and
- The learned professional exemption requires, among other things, advanced knowledge and consistent use of discretion and judgment.

At a high level, the common thread in the FLSA's job duties tests is that employees must exercise a certain degree of discretion and judgment to be classified as “exempt.”

INTEGRATION OF AI

AI threatens to replace independent judgment, discretion, and other key elements of decision making, which could cause historically “exempt” jobs to fail the FLSA's job duties tests. The result: increased risk of misclassification claims and resulting damages in the form of unpaid overtime, back pay, liquidated damages, attorney fees, and related penalties.

Consider, for example, a department supervisor or general manager. This type of position generally is responsible for supervising a team—i.e., hiring, assigning daily tasks, handling employee evaluations, and terminations. However, with the implementation of AI-powered office management systems that automatically allocate

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workloads and generate staffing recommendations based on historical performance and real-time metrics, the manager's traditional duties may now be automated. Although the employee may still hold a managerial title, the actual authority and discretion formerly exercised over personnel and operational decisions may be significantly reduced by shifting the role more towards simply monitoring AI outputs and rubber-stamping automated decisions.

Looking more granular, consider a professional, such as a laboratory scientist—a position historically classified as exempt because its primary duties require the consistent use of independent discretion and judgment in the interpretation of complex diagnostic data. If the employer integrates a sophisticated AI diagnostic platform capable of rapidly analyzing lab results and flagging potential anomalies, rather than manually reviewing the raw data, the employee now begins their work by reviewing the AI's preliminary findings. Even with AI integration, the employee *may* still need to validate the results, flag inconsistencies, or override recommendations based on clinical context. The AI may, for example, misinterpret rare disease markers or fail to recognize certain test result nuances due to a lack of sufficient data. In this situation, the human employee still plays a role, but, increasingly, the work may resemble that of an overseer or editor rather than a primary analyst; someone following a checklist, rather than independently deciding which actions should be taken.

This shift raises a key question: if the employee's duties become more about confirming or lightly editing AI-generated findings rather than using deep expertise to interpret data from scratch, does the role still qualify for an FLSA exemption? As with the difference between a journalist rewriting press releases and a writer producing original content, a lab scientist or general manager primarily validating AI outputs rather than exercising independent judgment may begin to resemble a “non-exempt” employee under the FLSA. Thus, as AI assumes functions once performed by humans, employers must ask: are employees still making meaningful decisions, or merely reviewing or abiding by AI-generated outputs?

TAKE-AWAYS

As courts and regulatory bodies evaluate exemption status based on the employee's actual duties—not just job titles or descriptions—employers must consider whether AI systems have fundamentally altered the nature of an employee's role. Perhaps the FLSA overtime exemptions will be adjusted to account for the changes AI is bringing to the workplace, but, until then, it is essential that employers:

- Conduct FLSA classification audits for AI-integrated roles, considering whether the role requires the use of judgment that is real, substantial, and on matters of significance, and whether the employee has the actual authority to interpret or override AI outputs, not merely to monitor them.
- Update job descriptions to clearly define judgment-based responsibilities, not just technical tasks.
- Monitor role evolution to determine when and if reclassification is required as AI capabilities increase and human oversight potentially diminishes.
- Train human resources and legal teams to recognize how AI may affect FLSA exemption status and to adjust compliance strategies accordingly.

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FOOTNOTES

[1] *See AI Use at Work Has Nearly Doubled in Two Years* (June 2025), available at https://www.gallup.com/workplace/691643/work-nearly-doubled-two-years.aspx#:~:text=AI%20adoption%20has%20increased%20primarily,%25)%20and%20finance%20(32%25

[2] Please note that this client alert does not consider state and local laws that may be applicable. Many state and local governments have their own wage and hour rules, which may impose different (and often stricter) tests to determine whether an employee classifies as "exempt" from minimum wage and overtime pay.

[3] To qualify for the FLSA executive, administrative, or professional exemption, the employee must be paid on a salary basis at a rate at least equal to the federal salary standard (currently US$684 per week (which equates to an annual salary of US$35,568)). To be paid on a salary basis, the employee must regularly receive each pay period a predetermined amount constituting all or part of their compensation. State and local law may impose higher compensation minimums.

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