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## **The Overtime Debate**

**Weighing the pros and cons of nonexempt status.**

**By John J. McGurk**

In 2004, revisions to the Fair Labor Standards Act resulted in many paralegals being reclassified as nonexempt employees entitled to mandatory overtime pay. According to the latest My Opinion survey, some LAT readers find the change beneficial and well-deserved, but others find it unnecessary and detrimental to the profession.

When asked about their current status, 77.3 percent of respondents said they are classified as nonexempt and should receive overtime pay, while 22.7 percent said they are exempt. Among nonexempt employees, 88.2 percent said their employers do compensate them for working more hours.

“With the long and strenuous hours paralegals are now working nationally, it’s nice to be compensated through either pay or time off,” said Laura Ahtes, AACP, RP, DCP, an 18-year paralegal from Wilmington, Del. “The salary range would have to be astronomical for some paralegals who already work 100-hour weeks.”

Beth Rountree, a 10-year paralegal from Boise, Idaho, agreed. “Overtime adds an element of fairness,” Rountree said. “Paralegals never make partner, exempt paralegals rarely receive bonuses equal to what their annual overtime pay would have been, and eventually most senior paralegals hit a glass ceiling for compensation and raises.”

Among those reporting compensation for overtime, 80 percent of respondents said it takes the form of either time-and-a-half pay or their regular hourly wage. Another 12.6 percent said they are given extra time off, and 7.4 percent said they receive a bonus.

While everyone enjoys more money and more time off, some respondents warned of a downside to the 2004 FLSA regulations.

“Employers have used [the regulations] as an excuse to slash other nonwage benefits that were given to paralegals when they were exempt,” said Patricia Powell, a 13-year paralegal specialist from Los Angeles. “For example, when I was changed from exempt to nonexempt, I lost my salary continuation benefits, and my bonuses were dramatically slashed because I was paid overtime.”

Fran Foxen, a 20-year senior paralegal from Scottsdale, Ariz., who has experienced both classifications, favors being exempt.

“I have worked as an exempt employee and as a nonexempt employee. I prefer exempt,” she said. “Although overtime pay can increase your salary, I prefer the flexibility of managing my time that comes with the exempt status. If I need to come in late, go to the doctor or run an errand, I can do so and make up the time without restrictions. It seems more ‘adult’ under the exempt status.”

Foxen might not be alone in her opinion, since 47.3 percent of all respondents, regardless of their current classification, said they don’t think it’s right that paralegals fall under the FLSA’s nonexempt category. While their reasons are varied, lack of respect was a recurring theme for their opposition to nonexempt status.

“I can attest to the detrimental effect it has had,” said Margaret S. Dick, a 36-year paralegal from Buffalo, N.Y. “Employers do not treat us with the same professional respect, and many paralegals do not exhibit the same professional demeanor they once did.”

Not everyone, however, believes “nonexempt” and “professional” are mutually exclusive. “The argument that being paid overtime makes you less ‘professional’ is absolutely ridiculous,” said Cindy J. Geib, APC, a 15-year paralegal from Manheim, Pa. “I don’t think earning overtime makes you less professional. In fact, I think it shows you are smart enough to take the money you have rightfully and legally earned.”

Elaine McKenna, a 21-year paralegal from Phoenix, put it even more succinctly. “It’s time we get past the professionalism smokescreen and get a day’s pay for a day’s work,” she said. “No more and no less.”