



# Managers Entitled To Overtime Pay ...

Did you know that a manager who regularly performs non-managerial work could be entitled to overtime pay?

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**U**nder both the current Employment Standards Act 2000 (ESA 2000) and its predecessor, the Employment Standards Act (Old ESA), most employees are entitled to receive overtime pay if they work more than 44 hours per week. Certain types of employees in both former and current legislation, such as managers, are exempt from this benefit.

Under the Old ESA the exemption applied to managers was formulated as employees “whose only work is supervisory or managerial in character.” Under the current ESA 2000, employees “whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis” are exempt from the overtime provisions of the ESA 2000.

The change in language, while seemingly very slight, is legally very significant under the ESA 2000. Consider a situation where a grocery store manager regularly serves as a cashier when the regular cashiers are on their breaks. Under the language of the Old ESA, decision makers took into consideration the overall ‘character’ of the work being performed to determine whether an employee was exempted from the requirement of overtime pay. Thus, in the example above, under the Old ESA, even though a manager may regularly perform work that is non-managerial in nature, if the overall “character” of the work remains managerial, the employee would not be entitled to overtime pay.

Under the current ESA 2000, if a manager regularly fills in for employees on a break, that manager does not fall under the exemption and is entitled to overtime pay. Whether or not a manager performs non-managerial work as a regular part of his or her duties is critical in determining overtime pay entitlement. The exemption only applies to managers who do not perform non-managerial or non-supervisory work on a regular basis. Put more simply, managers are generally not entitled to overtime pay unless they perform non-managerial or non-supervisory tasks as a regular part of their job.

In *Tri Roc Electric [2003] O.E.S.A.D. No. 1002*, the Ontario Labour Relations Board took the view that there was a clear implication in the ESA 2000 regulations that the regular performance of non-managerial duties in the normal course of an employee’s work renders the exemption to overtime inapplicable. This means that where non-managerial work is a regular part of the employee’s work, even if the overall character of the work is managerial in nature, the employee is entitled to overtime pay. In this case, the Board found that the character of the employee’s work was clearly managerial. Nevertheless, the employer was found liable for back overtime pay since the employee, although a manager, performed non-managerial tasks as a regular part of his duties.

This change in law is of critical importance to both employers and employees because it has the potential to redefine the employment relationship in significant ways. The traditional view of managers’ remuneration is that they are not entitled to overtime because they occupy a privileged position within the company and have a large degree of control over the workload. However, changes in legislation require employers and employees to revisit their understanding of their rights and obligations before potential costly troubles occur. Employers should periodically review the type of work that managers are performing so as not to be caught unaware of very large potential back-overtime claims. □

*This is the first article in a series of Employment Law Issues contributed by the Employment Law Group of Minken & Associates Professional Corporation. Keep on the watch for future articles on Employment Law.*

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