



The

# **Broadcasters' Desktop Resource**

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... edited by Barry Mishkind – the Eclectic Engineer

## **Broadcast Operations**

### **Broadcast Engineering Compensation under the Fair Labor Standards Act**

***By Barry Mishkind***

*[January 2020] The US Department of Labor has amended/updated the Fair Labor Standards Act (FLSA). A couple of things affect broadcasters.*

On January 1, 2020, the [“Final Overtime Rule”](#) of the FLSA, amended on September 24, 2019, will go into effect. It may affect someone at your company – especially if that someone may be “on call” 24/7.

This rule is a component of the FLSA, which covers many aspects of how and employee must be paid. The law itself has a number of parts, which can be [found on the Department of Labor website](#).

In a nutshell, the FLSA mandates that, in general, salaried employees under a stated threshold must be paid overtime for work over 40 hours a week.

#### **EXEMPTIONS FROM OVERTIME**

For the upcoming January 1, 2020 change, the focus is on that overtime payment, and we want to address that issue here.

To start, there are a number of exemptions under this law, most of which do not apply to broadcasters.

For those in the broadcast industry, there are some special exemptions, specifically the “Announcers, news editors, and chief engineers

of certain nonmetropolitan broadcasting stations.”

You probably already see one or two words in there that you will want to be better defined. While the FLSA contains descriptions, in some cases it raises more questions than provides answers.

#### **NEW MINIMUM WAGE LEVELS**

First of all, under the FLSA, which is in Title 29 of Code of Federal Regulations, employees must make at least \$7.25/hour – or more if your state minimum wage is higher than the Federal minimum wage – plus 1.5 times that rate for overtime.

However, to be exempt from paying overtime after 40 hours a week, a salaried employee must make at least \$17.10 an hour (\$684 per week or \$35,568 per year. This is up from the previous minimum level of \$23,660 a year (or \$455 a week).

For those employees who have not reached that pay level, the 29 CFR 13(b)(9) of the FLSA specifies three categories which may be exempt from overtime, as noted above. The qualifications are noted in 29 CFR Part 793.

#### **LOCATION**

For broadcasters wishing to utilize the exemptions, the market size is important.

To qualify, they must be in a city or town of 100,000 or less, so long as it is not within a metropolitan area with a population of more than 100,000.

A city deemed to be *within* a metropolitan area *but* with a population of 25,000 or less *and* is more than 40 air miles from the principle city would also qualify.

## EMPLOYEES

Defining who is an “employee” involves some 15 points the IRS uses to differentiate between independent contractors and employees.

The key is not just how they are paid.

For the purposes of this discussion, we will assume you already know in which category you fit [according to the IRS](#). Considering Behavior Control, Financial Control, and Relationship is going to depend upon your individual circumstances and the local laws that relate to those aspects of employment.

For broadcasters, it is worthwhile to note that the word “independent” in “independent contractor” is part of the consideration.

The exact descriptions of employees exempt from overtime are described in 29 CFR 793.7 for “Announcer,” 29 CFR 793.8 for “News editor,” and [29 CFR 793.9 for Chief engineer](#).

## CHIEF ENGINEER

While Announcer and News editor are sort of generic titles, Chief engineer gets a bit more specific – as to duties and how many there are per station.

It would probably be useful for us to quote the whole paragraph from the FLSA:

“§ 793.9 “Chief engineer.”

“A chief engineer is an employee who primarily supervises the operation maintenance and repair of all electronic equipment in the studio and at

the transmitter and is licensed by the Federal Communications Commission as a Radio Telephone Operator First Class. In small stations, only one such engineer may be employed, and in some cases he may be assisted by part-time workers from other departments. The engineer in such cases will be regarded as employed as the “chief engineer” for purposes of the section 13(b) (9) exemption provided that he performs the duties described above and is properly licensed by the Federal Communications Commission. Where two or more engineers are employed by a station, only one may qualify as “chief engineer” – that one who, on the basis of the factual situation, is in charge of the engineering work.”

## CLARITY CAN BE ELUSIVE

As you see, the language of the FLSA does have some areas where a legal opinion may be necessary.

For example, it specifies there is only one Chief engineer at “small stations.” This could raise the question of the effects of consolidation, even in smaller markets, where a facility might contain seven or more stations.



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The advertisement features a blue background with a white and grey Nautel transmitter rack on the left and a glowing vacuum tube in the center. The text is in white and yellow, with the Nautel logo at the bottom right.

Also, the law contains reference to the Radio Telephone Operator First Class license from the FCC. Since we know that requirement and licensing from the FCC was dropped in 1985, whether a Chief Engineer meets the requirements of 793.9 would likely depend upon the other criteria noted.

And it is interesting to note the lower case “e” in the label for the Chief engineer. Perhaps this is a reaction to how in some locations, some boards try to prevent broadcasters from using the term Engineer unless they are board licensed.

It does not appear the FLSA is trying to make that distinction, but it is another term worth checking out, if you are covered by the law.

#### BOTTOM LINE

If you are being paid more than \$35,568 per year, you can work overtime – such as being “on call” – without being paid for such overtime.

If you are being paid less than \$35,568 per year, and qualify as the Chief engineer, you can work overtime – such as being “on call” – without being paid for such overtime.

If you are not designated as the Chief engineer of a radio station, earn less than \$684 a week, and work more than 40 hours, you must be paid overtime.

Perhaps the most important question here is “must the employer pay for my being on-call

24/7?” as many engineers are indeed expected to be ready at any time, day or night, if the transmitter goes off, for example.

As with many aspects of labor law, the answer can vary from state to state. And, once again, it may require a lawyer, versed in employment law, to answer every question about the FLSA. So, if you are unsure, it is wise to check with a lawyer (you should be seeing a pattern here).

#### DO NOT IGNORE

Like most laws, there are penalties imposed on companies that are found violating the FLSA, even just misclassifying an employee.

For example, civil penalties can be over \$2,000 per violation, plus back pay and liquidated damages, including legal fees.

#### CAUTION

Once again, we offer the caution: While the changes may not affect the larger number of broadcast engineers, if you are not comfortable with the published information by the Department of Labor or the IRS, it may be the course of wisdom to discuss your individual situation with a lawyer,

Just to be sure.

*- And just to be 100% clear: I am not a lawyer and do not play one on TV. Hence the repeated refrain to check with an attorney familiar with labor law to avoid problems.*

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