Compliance Cheat Sheet: Overtime Exemptions for “Managers”



What’s At Stake

The normal employment standards law duty to pay overtime doesn’t cover supervisors and managers (referred to collectively “managers,” unless indicated otherwise). Being able to recognize who’s a manager is crucial. Misclassifying a manager as an employee may result in paying overtime when you’re not required to; misclassifying an employee as a manager exposes your organization to risk of grievances, complaints, prosecution, fines and other penalties.

As payroll manager, you bear responsibility for getting the classification right. But that’s often easier said than done, especially when you consider that for employment standards law purposes, job title doesn’t determine manager status. Here’s what you need to know to overcome this classification challenge. Click here to look up the overtime for manager rules in your jurisdiction.

What Employment Standards Laws Require

Manager exemption to overtime and hours of work requirements apply in all 14 jurisdictions. In AB, BC, FED, MB, NS, NT, NU, ON, QC and YK, the employment standards statute or regulation specifically says that overtime requirements don’t cover managers; the other 4 provinces provide the exemption indirectly:

- In SK, the definition of “employee” entitled to overtime and other employment standards benefits excludes persons who perform services that are “entirely of a managerial character”;
- NB and PEI reach the same result by including managers in the definition of “employer”; and
- In NL, individuals earning more than 1.5 x the current minimum wage don’t qualify for overtime pay.

Who Is a Manager?

A judge once famously said that he couldn’t define “obscenity” but knew it when he saw it. Unfortunately, that formula doesn’t work for “manager.” It’s often hard to tell who’s a manager, especially when individuals perform both managerial and non-managerial duties. The absence of a definition in employment standards laws doesn’t

make the task any simpler. The starting point is looking at how your jurisdiction's law frames the manager overtime exemption (or describes a manager in the definition of "employer" or "employee").

"Entirely" Managerial

Let's start with the easiest one to interpret. Sask. says a manager must perform services that are "entirely of a managerial character." In other words, the exemption wouldn't cover employees who perform both managerial and non-managerial duties, regardless of allocation and workload.

"Primarily" Engaged in Managerial Duties

Manitoba and the 3 territories exempt individuals "primarily" engaged in managerial duties. Although there's no definition of "primarily," experts suggest that 50% or more is the common interpretation.

"Principal" Employment Responsibilities

In BC, the exemption is for someone whose "principal employment responsibilities consist of" supervising and/or directing human or other resources," or a person employed in an "executive capacity." Experts suggest that "principally" is more than "primarily" but less than "entirely."

"Employed" in Managerial Capacity

Alberta says that the individual must be "employed in" a managerial capacity. to be exempt from mandatory overtime. "Employed in" presumably refers to how the job is described in the employment contract, explains BC payroll expert Alan McEwen. Nova Scotia uses a similar definition—saying managers are employees "holding supervisory or management positions."

Non-Supervisory Tasks on an Irregular/Exceptional Basis

In Ontario, the exemption applies to one "whose work is supervisory or managerial in character" and who may perform non-managerial tasks on an "irregular or exceptional basis." Again, this raises as many questions as it resolves. What does "irregular" mean? It's different from infrequent, says McEwen. It's not simply a question of percentage of time. An irregular non-managerial task means something exceptional and that isn't covered in the job description. For example, an employee required to clean the gutters each spring is performing a non-managerial task infrequently, but not irregularly.

Senior Management

The overtime exemption in Québec applies to "senior management personnel." CNNST guidance clarifies that the phrase includes a person: who's part of senior management; participates in big global decisions of the company (rather than just day-to-day decision-making); enjoys a degree of autonomy; manages management personnel (not just personnel); and is among the highest paid.

Classification of Employees Who Have Mixed Duties

As noted above, several provinces say an employee must be "primarily" or "principally" engaged in managerial duties to be a manager. The question of how much time an employee must spend on managerial functions to cross the line varies by jurisdiction. For example, Ontario uses the so called "50% rule": Employees aren't subject to the exemption if they spend at least 50% of their time on duties that are covered by mandatory overtime.
But in most jurisdictions, the test of "principally" or "primarily" goes beyond simple work hours numbers and focuses on responsibilities, how much time they spend supervising, the priority the employer places on the person's supervising and directing responsibilities and the nature and size of the business.
Example: An Alberta tribunal ruled that a chef was a manager. Even though he did "considerable" non-supervisory work like cooking and cleaning, his duties were predominantly supervisory and managerial, including managing stock, buying supplies, setting work hours, scheduling staff vacations, hiring and disciplining staff and preparing budgets [*1015714 Alberta Ltd. v. Cross*].
Note that if the outcome of the *Cross* case would have been different had it occurred in Sask., where the overtime exemption applies only to employees who perform tasks "entirely of" a managerial nature.

How to Comply

The good news is that there are 2 places you can turn for insight in interpreting the manager exemption of your own jurisdiction:

- Government guidelines; and
- Court cases.

We've gone through these sources and boiled them down into some basic and common principles.

What Does Not Determine Manager Status

Let's start by identifying the red herrings:

Not Based on Title: Individuals may be considered managers under the law even if they don't have the word "manager" in their title; conversely, individuals may be considered not to be managers even if they do.

Not Based on Job Description: While job functions are certainly critical to the analysis, don't make classifications based solely on how the position is described in a written job description. The real question is what does the person actually do, rather than how is the job described.

Not Based on How Compensation Paid: The most common misconception is that being on a fixed salary automatically makes a person a manager while earning an hourly wage makes him/her an employee. While managers often do get a salary, it has nothing to do with their status of managers for purposes of the overtime exemption.

What Does Determine Manager Status?

Although the rules vary, there are 3 indicae of management that regulators, courts, arbitrators and labour boards (which we'll refer to collectively as "courts") look for in ruling on whether the exemption applies in actual cases:

1. Supervision of Other Employees

The first key indication is supervising or directing other employees, including

authority to:

- Hire and fire;
- Discipline—either directly or as part of a management team;
- Set work schedules;
- Evaluate employees' performance;
- Make or recommend promotions; and
- Assign tasks to employees.

No single factor—or absence thereof—is of decisive importance in determining managerial status.

Example: Simply inspecting work of other employees and reporting their mistakes wasn't enough to make an employee a manager. The Alberta Employment Standards Umpire noted that the employee in question couldn't hire or fire or take disciplinary action against employees. Nor could he delegate assignments, set wages or approve requests for time off [*Great Canadian Roofing Corporation v. Lafleur*].

Example: An Ontario employee overseeing how work was done wasn't a manager because he didn't have power to hire, fire, set wages or discipline. If quality issues or other problems arose, he had to refer them to a senior manager and carry out that manager's decisions [*Baarda v. Plywood and Trim Co. Ltd.*].

2. Role in Running the Business

Another factor courts consider is the person's role in running the business, specifically his/her:

Functions: Government guidelines of several provinces suggest that management functions typically include project leadership, implementation of management policies, marketing, budgeting and other activities involving allocation and disposition of company resources.

Autonomy: Can the employee make day-to-day business decisions without getting the approval of management? "A key factor," according to Manitoba guidelines, "is the amount of independent judgment and discretion employees have when operating the business." The greater the discretion, the more likely the person is to be considered a manager.

Influence over Management: A person's "power of effective recommendation" is often enough to prove managerial status.

Example: An Ontario labour board ruled that an employee was a supervisor. Even though she didn't have absolute authority to hire and fire, she participated in hiring decisions, ran the hiring/interview process and made recommendations to management [*Bowes v. Code's Mill on the Park*].

3. Amount of Compensation

Although salary v. wage compensation structure isn't a definitive factor, compensation amount may be. Employees are more likely to be deemed managers if they're paid substantially more than the persons they oversee.