

New Harvard Wage Study Shows Employers Are Inflating Titles to Illegally Dodge Overtime

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I am constantly reminded of employers' mistakes in determining that their workers are exempt from overtime payments under the Fair Labor Standards Act. I recently came across a report of a new study from researchers at Harvard Business School and the University of Texas at Dallas. This study, covering 2011 – 2018, examined "title inflation," misclassification of employees to avoid paying overtime, and the risk of U.S. Department of Labor/ USDOL suits.

The report states, in part, "Our evidence indicates that firms strategically use job titles to exploit regulatory thresholds to avoid paying for overtime work ... We find that [this practice] is also strongly associated with the usage of fake managerial titles and ... thus can be used as a timely indicator of potential FLSA violations."

The law requires that in order to classify an employee as exempt from overtime, the employee must earn a certain amount of salary, as well as perform the job duties of a non-exempt worker (for instance, managing others, professional duties based on a higher degree, and computer programming.) During the study's time period, there was a 485% increase in managerial titles and pay that barely bumped workers over the minimum salary required to classify workers as exempt. Inflated titles are used to justify salary: researchers saw a barber called a "grooming manager" and a front desk clerk labeled as a "director of first impressions."

Overtime — or lack thereof — is prevalent in issues of wage theft. Nearly two-thirds of wage theft violations that resulted in fines involved overtime issues, according to the study's analysis of U.S. Department of Labor data from 2010 to 2021. Of all back wage fines levied by the agency, over 80% were for overtime. The USDOL has recovered millions of dollars in back pay for unpaid overtime. If just one employee blows the whistle – it costs employers dearly. Review the employee's primary duties and then classify them correctly. If concerns arise about retention, know that the employee can retain the title (and salary); but watch hours closely to ensure overtime isn't owed and set a policy requiring management's permission to work overtime. Consult an experienced attorney for help to determine classification.