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## Avoiding Overtime Losses

**Now, executives are suing for overtime pay -- and winning. Plus: report says perks nearly 40 percent of total payroll costs.**

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Think all of your salaried workers are exempt from overtime pay? Think again. Aided by the Fair Labor Standards Act's tricky and outmoded language, salaried managers and even executives are joining class-action lawsuits that insist their companies have denied them millions of dollars in overtime pay — and they're winning.

Since a California jury ordered Farmers Insurance Exchange to pay its salaried claims adjusters \$90 million in overtime and penalties in 2001, managers at Starbucks Corp., RadioShack Corp., and United Parcel Service of America Inc. have won settlements of \$18 million, \$29.9 million, and \$18 million, respectively, on the grounds that they were misclassified as white-collar workers under the act and were thus made ineligible for overtime pay. Intel Corp., Kinko's Inc., and Aetna Services Inc. are among the many companies currently facing similar multi-million-dollar claims in state and federal courts.

To be sure, some companies may be inflating titles to cut costs. UPS, for example, "was clearly taking advantage of part-time supervisors by making them work extra hours week after week and then claiming they were exempt and not entitled to overtime pay," alleges Debra Hurst, attorney for the nearly 6,000 UPS supervisors involved in the case. While admitting no wrongdoing, the company has since changed its practices to pay the supervisors additional wages for extra hours.

However, many other companies are vulnerable to the class-action suits because the eligibility criteria for overtime pay are so murky. Even the Department of Labor concedes that the current federal rules, written in 1949, offer little insight into how to classify many roles in the high-tech and service sectors, or handle situations like flextime. The criteria "are long, they're confusing, and they're extremely old," says Tammy McCutchen, head of the DoL's wage and hour division. "It's very difficult even for employment lawyers to say which employees are entitled to overtime."

Practices that could make companies vulnerable include having salaried employees perform duties similar to those of hourly employees and paycheck procedures that effectively treat salaried managers like hourly employees. And, if a company is found guilty of violations under federal law, it could owe salaried employees overtime pay based on the hourly rate implied by their salaries, as far back as three years.

### Costs of Perks Piling Up

Relief for companies may be on its way from the DoL, which expects to propose rules to modernize and clarify the overtime exemptions by the end of this month. "One of our goals is to cut back on the litigation," says McCutchen. The final rules, however, will not be retroactive.

With salaries stagnating and health-care expenses booming, benefits are becoming an increasing portion of the total cost of employment. The U.S. Chamber of Commerce reported in January that employee benefits made up 39 percent of total payroll costs in 2001, up slightly from 37.5 percent the prior year.

"The good news is that although the economy is not performing as well as we would want it to, companies have not significantly cut into their benefit programs," says Chamain O'Mahony, director of information resources at the Chamber of Commerce. Since the data is from 2001, however, it's possible that benefits cuts have yet to show up in the results, she cautions.

In fact, union workers at General Electric went on strike last month to protest the company's plan to shift more of its health-care costs to workers. Benefits experts believe that unions at other companies may follow suit as workers are asked to shoulder a greater percentage of medical-benefit costs, which are skyrocketing.

For the second year in a row, medical benefits, which accounted for 11 percent of total gross payout, made up the largest share of employee-benefits costs, surpassing pay for time not worked. "They are certainly a bigger part of the benefits mix," O'Mahony says. According to several recent studies, premiums for employee health-care insurance went up by around 13 percent in 2002.

Respondents said vacation time for workers averaged just over 10 percent of payroll costs. Retirement- and savings-plan programs, accounting for an average of 8 percent of payroll, came in third on the list.

### Bulging Bennies

How the payroll dollar is spent. "Legally required payments" includes Social Security payroll tax, unemployment insurance tax, and state workers' comp premiums.

*Source: U.S. Chamber of Commerce*

- Wages: 61%
- Medical benefits: 11%
- Pay for time not worked: 11%
- Legally required payments: 8%
- Retirement and savings: 8%
- Other benefits and costs: 1%

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