



## Season 3, Episode 10: “Overtime 101”

Speakers: Lee Jacobs and Rosemary Enright, Barclay Damon

**[Lee Jacobs]:** Good morning, and welcome to the next and latest episode of Barclay Damon’s *Labor & Employment Podcast*. My name is Lee Jacobs, a partner in the Labor & Employment group, and I’m pleased to be here with my co-host, co-partner, co-friend, co-everything, general great person, Rosemary. Good morning, Rosemary.

**[Rosemary Enright]:** Wow. With an intro like that. My gosh. Morning, Lee. How are you doing today?

**[Lee]:** I’m doing all right. I’m doing all right. And I’m looking forward to this conversation that we’re about to have today we are... This is a hot off the press episode for you viewers, our listeners out there. Because I don’t know about you, Rosemary, but I’ve been getting a lot of questions about these new exemptions overtime rules. What have you been hearing from our clients and listeners?

**[Rosemary]:** Well, that’s exactly right. I had a call just yesterday. One of my clients called. They said to me, so, Rosemary, why didn’t you tell me about these new overtime rules? And I said, you know, I’m not sure what you’re talking about. What do you mean? Well, that new overtime rules. And so as I dug a little deeper, I realized, oh, no, it’s confusion around the salary threshold and pay frequency. Don’t worry, listeners, we’re going to explain all of that. But it was just... everybody just has seen these headlines. Right. Or they get these alerts from, you know, an HR company that they work with or something that says, hey, get ready for these changes to overtime. And they think there’s some big change. So it’s exactly what... I mean. Two or three calls a weekly for the past few weeks, Lee, for the past few weeks.

**[Lee]:** I couldn’t agree more. And I’m and I’ve been getting the same thing too. They said, well Lee, didn’t you do, with Rosemary this episode showed months ago where you said you’re the new rules, and I followed those rules, and now I’m getting these blasts and I’m freaking out, and...And as we’re about to tell you, take a deep breath. It’s going to be okay. Because essentially, if you’re following New York law already, you will be in compliance with these new rules that are coming to place from the federal, from the federal government. But I...

**[Rosemary]:** Don’t tell them that, Lee, they won’t listen to us.

**[Lee]:** I think, because there are some catches to it, though, right there.

**[Rosemary]:** That’s right. I mean, I’m yanking your chain, I’m yanking your chain!

**[Lee]:** As always, there’s a catch, but I yes, I think it’s probably good to start, you know, as we spoke about before. So a little bit of foundation to understand why this confusion, why these questions are coming into place.

**[Rosemary]:** So but before you do that, Lee, fun fact.

**[Lee]:** That's right, I forgot fun facts. if you mind, if I can just steal a little thunder of my fun fact that my, my big fun fact was last week, or... was my grandmother's 102nd birthday, and I got to celebrate it with her, and I couldn't have been happier. And I look forward to celebrating with her 103rd and fourth, because this woman is like the Energizer Bunny, she does not stop. So that's my fun fact of the day. And a very happy and loving and fun fact.

**[Rosemary]:** That is wonderful. Happy birthday to Grandma. That is awesome. That is awesome. Well, you know, my... and I don't know that I call it a fun fact, but it's definitely a fact. So for our for our listeners who have, you know, seen me on screen before, you may notice a few little marks here along the side of my face and that, thinking, what the heck happened to Rosemary? Well, here's the fact. I spent a lot of time in the sun, Lee.... and I am now paying the price. So I was at the dermatologist last week, and, you know, they had to do a lot of, you know, freezing off of, pre-cancerous. So my public service announcement for all of our listeners: wear sunscreen, you know, and the irony is, I was on vacation in Mexico, of all places. So everybody somehow thinks well that's what happens when you go to Mexico. I said, no, it was not that fast. This has been, you know, brewing for a while. But anyway, that's why you see the marks, wear sunscreen.

**[Lee]:** So I remember growing up, my mother, my grandmother's daughter, would sit by the pool with, baby oil, with iodine, with one of those visors, with the aluminum foil. And as a kid, I was like, that looks terrible. Now, as an adult, I'm like, please, I want to do that. But hearing your story, I'm like, maybe not.

**[Rosemary]:** And can I just say, I think that, you know, I must have gotten that from your mother because that is exactly what I did. That's what you do. We're in Buffalo as soon as and I love Buffalo. Not dissing the weather, but. But the minute the sun was out, I had my iodine with my baby oil lathered up and the tinfoil laying out there. Oh, yeah, and like I said, paying the price.

**[Lee]:** I may be doing that this weekend down here in the city if the sun is out. So we'll see. We'll see. You'll see me on Monday. I'm bright red, Rosemary.

**[Rosemary]:** That's right, that's right. So anyway. All right, so now we got to get down to the serious stuff.

**[Lee]:** But back to the federalism discussion to take us back to high school. Right. So the federal government sets the floor, the bare minimum with the Fair Labor Standards Act. And states and cities can come in and set the ceiling with higher rules, higher minimums, under... and in New York, that's the New York labor law. So just very briefly, this is the best way, I think, to think about that. In New York City, minimum wage is \$16 per hour. And, in Long Island, and Westchester, everywhere else in New York, it's \$15 an hour. But in Tennessee, in Kansas, in Wyoming and Idaho, the minimum wage is still the same rate that it was when I worked as a shoe salesman in high school in the '90s, \$7.25 an hour. So while the federal government says \$7.25 states and cities can come in and do a higher rate, and that's what the confusion is coming from here, because New York set its new rules for exemption thresholds—and we'll define those in a second—at the beginning of the year. And that's why you had all the announcements from us and all of our earlier podcasts. And then fast forward to a couple months ago. The federal government has now upped not minimum wage, but has upped the exemption thresholds. And so that's where this confusion is coming from. And the exemption thresholds—and I hate lawyers when we get so specific with these words that really don't make sense—so it's really when we say exempt it means you are exempt from being paid overtime. So if you are non-... you are presumed to be under the law, whether it's the FLSA or the labor law to be eligible for overtime pay presumptively. And then you become ineligible for overtime when you meet two main characteristics: First, you have... you do a job that makes you ineligible for overtime and you make a certain amount of money that makes you ineligible for overtime. If either of those characteristics are not met, you get overtime, regardless of how much you make or what you do. The did I did, I put that in a good way, Rosemary? Or do you have a real-life example or something to help crystallize that, perhaps?

**[Rosemary]:** Yeah. Well, you know, that's exactly how I'd say it. And the only thing is, I didn't want to interrupt you, Lee, is at the beginning, you know, as y'all were sitting there listening, you may have heard Lee say, "New York State changed its rules on thresholds." And I would respectfully suggest that we don't even use the word "rule" because I think it's just throw... That's what I think is throwing people off. If you think about it, they think a "rule" is like we think of something being written down and you've got to follow it. So, so I like to just say, you know what the salary thresholds have increased. So just like minimum wage is increasing, the salary threshold for an exemption has increased in lockstep. And in fact, if you were to go and read... don't do it everybody. It's boring as heck... But if you were to read the New York labor law, it actually tells you with the that the, the percentages. Right. So minimum wage and then the, the salary threshold for the exemptions, goes up by a percentage based on what the minimum wage is and the percentage there. So again, don't get into all, you know, none of that matters because I'll just tell you what the numbers are. But just think of it as the threshold is going up as the minimum wage is going up. And, you know, in the examples, you know, it's Lee just said, Rosemary, give us an example to help crystallize this literally happened last week. A client called me and asked about the new overtime rules and so I reminded them, talk them through everything. And they and... what they meant by what the what this rules question that's been coming up. So we talked about the salary threshold and her response was "Great. We're all set then because we're paying everybody at this that the threshold." All right. And I said, all right. And they happened to just during that conversation, make reference to the job title. They said, yeah, so we're going to pay all of our... in this case, I'm trying to remember what the job title was. I think it was physical therapists, I think it was physical therapists. And as she was talking and she said "physical therapist," I said, wait a second. I said, so tell me what these physical therapists do. And so she started to describe what they were doing, and I said, wait a second. I said, you know, I'm not certain that your... they're going to meet the duties test. And her response was, but we're paying them a salary, and it's this amount, Rosemary. It's well over what New York State wants. And I said, but again, we've got to look at what their duties are. And so we went through that and I gave her... So if you don't know this, gang, go ahead. You can very quickly and easily Google "FLSA exemption job duties." And they the federal government, the Department of Labor has put out terrific fact sheets that explain all of the duties that are required. And they talk about a primary duty. And as we went through it, none of them were meeting that.

**[Lee]:** Building on that. I think the DOL defense had even a wizard where you can go in and click and answer questions, and will help you and we'll put a link up on to our Spotify page and other resources for everyone to be able to access those materials.

**[Rosemary]:** Yeah. But what they if I could just and you know, what I always say is as Lee... you know he already described this or explained it, but just think of it as there's three tests and they have to meet all three tests. It's just that simple. Do you pay them a salary? Is the salary high enough? And now are they performing the duties? It's just that simple. And if one of those three is missing, they're not exempt.

**[Lee]:** Yep. I think that that's and... I think that is 150% correct. And I'm thinking of my own personal life history, I remember... and this and this is in context of also this change of the threshold number. So I remember when I was in high school, I may have been the shoe salesman, but I had friends that were working at McDonald's. Everyone was an assistant manager. They called everyone an "assistant manager" to avoid paying overtime. And when enforcement came through and looking in to see what they were actually doing, you could call them manager, president, CEO, cook, whatever you wanted. It does not matter what the title is. You got to look to see what they exactly do.

**[Rosemary]:** Can I tell you I have to interrupt you, Lee? That literally happened yesterday. I was on the phone. Literally. What you just described happened yesterday. I was on the phone with the US Department of Labor, because they're doing it... It's not as a result of a complaint. It's just a, you know, one of their random investigations and they said, you know, and I don't want to say anything, because it's active right now. But they said I'm looking at, this, these payroll records and they've got, like, basically every single person—not every single person. But, you know, half of the people are managers. And she said, which means I can see

that none of them are getting overtime and they can't possibly... given this industry, and I again, I don't want to disclose anything. She said, "That's not possible." And I just listened as, of course. And then we I had a conversation with the client and lo and behold, they weren't looking. They were not looking to do anything intentionally. But again, it was the same thing. All these well, they are a manager bring them in, their manager, they don't get overtime.

**[Lee]:** So and I think probably best to start with the different exemption categories and move to what the amounts are

**[Rosemary]:** I agree.

**[Lee]:** So these are the duties and responsibilities. Your title everything that relates to that, you must hit all of these elements in order to essentially move to the next task, which is do we pay you a salary and then do we pay you enough. So one of the one of them is an executive exemption administrative exemption. So I in ...these come from the federal labor standards Act. And the New York Labor law adopts most, if not all of these same rules. So I like to think of the first one, the executive, the managerial exemption. And this is what we generally and colloquially think as someone who is a manager, they're running in a division of an enterprise, they're in charge of people, they're scheduling, their in charge of firing, discipline. They are traditionally what we think as a manager. But when you dive a little bit deeper into the code and you see what the requirements are. In New York, in order to be a manager, you have to manage at least two people. If you don't manage at least two people, you manage one person or zero people, and your title is "manager." Guess what? You're not a manager. And during the pandemic, this hit for a number of my clients in a very real-life scenario—restaurants that were here in the city and I'm sure across throughout the state, laid off vast numbers of their staff and what wound up happening was the people that they retain that were working were their chefs and managers, their exempt employees that were ...used to before the pandemic manage kitchens, manage front of the houses. Now all of their staff have been sent home and have been laid off or they're on PPE leave. Whatever it is, they're not there. Even though they are a manager and we're paying them enough and— we'll get to you what the "enough" is in a second. They were no longer managers under the law. And if there was an audit or a lawsuit, we would have to be paying them overtime now for these 80, 90 hours per week that they were working. Luckily no one got dinged on that. But that was something that, in addition to all the things that could keep me up at night during the pandemic, that was one that, was it was bright and bright there, but no one actually got done for it.

**[Rosemary]:** And do me a favor, just for everybody repeat that and not the whole thing. But what you just said about the two, because I think that's really important for people to understand.

**[Lee]:** To be a manager. New York considers you to have to manage at least two people. That doesn't mean like you're their mentor or you say hi and you check in on them in the morning. That means you have functional power over them. It's either you're part of the hiring, firing, discipline, decision, promotions, choices. Your in charge of scheduling. A good word that I like to use is that when you put all of that together is you control the financial destiny of somebody else.

**[Rosemary]:** That's right. Terms and conditions? Yeah. Terms and conditions of employment, Lee. Right. You control their terms and conditions of employment.

**[Lee]:** Yep. And that's the managerial executive exemption as I see it. And then there's the administrative exemption. So this is you know when I speak about this in the open world with people, you know, they say, oh the admin exemption. So that means my administrators, my administrative staff, my legal secretaries, the secretaries that we... I don't have to pay them overtime? You do. it depends again, not what the title is of what exactly you do within that exemption. Rosemary, do you have thoughts on the admin? Is I because I, I always

again say the practice of law is open book, as I flip to what exactly the admin exemption requires. Do you have, any real-life examples of how you've seen someone using the admin exemption going wrong or awry?

**[Rosemary]:** Well, it was the exact... what you just said, Lee. So it was well, our person who sits out at the front desk and welcomes everybody. Their job title is admin. So, they've they're entitled to that exemption or they're covered by that exemption. So I think you know what I think it is, Lee, I think it is the name of the exemption. Right. Because I mean, it really is executive to me is... so it's a manager, as we said. But when you think of "executive" you think of manager but administrative, it does it does bring up the idea that, oh, this is someone who is an admin. But it is so much more than that. And you know, Lee's looking up right now so we can tell you exactly. But again, use the fact sheets that are out there, but you know they'll talk about, the fact sheets will talk about the primary duty. And that, you know, so and he'll discuss that in a minute. But it's also that these individuals are exercising independent judgment. So if you think about it, not at all taking away, Lee, from someone who is, is a legal secretary or an admin or the person who's sitting at the desk, you know, nothing. Again, no commentary on that position. But what I will say is, if the individuals are not exercising independent judgment about things of significance to the business. All right. So that's really what they're looking for with that. And when you step back and start to think about that, hey, is this person actually exercising independent judgment about things of significance to the business and performing the duties which, Lee will will share with you in a minute. Then very quickly you say, oh, no, it's not the legal secretary. It's not the individuals who are working in the mailroom, who we call admins, you know, and, and I have to say, it's also a lot of times, you know, somebody will say, oh, well, what about the executive assistant? Lee? Well, again, probably not. So go ahead, Lee, share with them because I know you're looking at it.

**[Lee]:** I, I got to say, Rosemary, you hit exactly what the point is exactly. And the one that I want to is it says so the so under the from the from one of the wage orders specifically I'm looking here at the hospitality wage order of New York, which is the same in miscellaneous industry and the same from the FLSA from the federal government. The administrative one is and I'm reading quote here, "whose primary duty consists of the performance of office or non-manual field work." So you got to be in an office not in the field. Again titles are irrelevant here. "Work directly related to management policies or general operations of the employer." B, and Rosemary this is where you get the gold star of the day "who customarily and regularly exercises discretion and independent judgment." That is... that's the key thing here. and you could and I'm not going to belabor the point, Rosemary, because you got it exactly right. And the third element is "who regularly and directly assists an employer in a bona fide executive or administrative capacity who performs under only general supervision. Work along specialized or technical lines requiring specialized training, experience or knowledge." So I like to think of this perhaps this would be maybe like a pharmacy technician, right? Someone who is... shows up, they come to work and they have they exercise their own independent judgment on how to do it. They have general supervision by the overarching pharmacist of telling them, here, you know, do the work, but the pharmacist isn't micromanaging them. They're their boss.

**[Rosemary]:** Yeah, I don't know. Sorry. I'm sorry, Lee. Go ahead.

**[Lee]:** Please. No, please take it away.

**[Rosemary]:** No, I was going to say also, you know, if you, I will sometimes look and say, you know what? Let's see what your people in accounting, you know, so some of the individuals who are sitting doing all of the, you know, managing all of the books and that and so, something like that.

**[Lee]:** I think that is a... exactly on point. And so there's three main exemptions: executive, administrative, and then professional. And professional was the one, if you remember, from our prior episode when we talked about this is where we said there was "the catch." The catch here was... is because New York prior to the federal updates, right. New York for the executive in the administrative exemption prior to the, stand,



excuse me, from 2023 going into 2024, the amounts that needed to be paid to these people to qualify under these exemptions were if you were in New York City, Long Island or Westchester, \$1,200 per week or \$62,400 per year. And everywhere else in the state, it was \$1,124.20 per week, or \$58,458.40 per year. Why the government could have just done \$1,125 per week, and made it \$58,500 per week, I don't know. Because that's what it used to be in New York City two years ago, but who knows, right? So those were what we were talking about, right? So to be a manager and to be exempt from overtime, you had to be a manager managing two people, New York City, making \$62,400 on a salary on a regular basis. Mazel tov. Don't have to pay overtime. But the professional exemption was the one where we gave you a catch last time. And the professional exemption? The reason why the catch exists is because New York did not come in and set a ceiling as to the amount of what must be paid in order for someone to fall out of that, of overtime. We followed what the federal government had said in previously. So before we talk about the money, what you must pay your professionals, let's talk about what a "professional" is. Under the law a professional is someone who has a, requires "knowledge of an advanced type of a field in science or learning, customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, from an apprenticeship, and from the training and the performance of routine mental, manual or physical processes." Rosemary, I don't know. Who do you... What kind of profession do you think apply is there? I don't know, maybe.

**[Rosemary]:** I don't know, maybe me and you.

**[Lee]:** Where's lawyers, accountants.

**[Rosemary]:** Doctors.

**[Lee]:** Things to that nature. And then.

**[Rosemary]:** CPAs. Yeah.

**[Lee]:** Exactly. And then. And then when you move away from the schooling. Right. You need the degree. It's perhaps, you know, a... creative individuals, artists, chefs, things to that nature that are working in a professional capacity, something that you need more than just your life experience, so to speak, in order to accomplish and meet those goals. And that and again, Rosemary, one last thing, the... an important thing here is that, again, you must have, independence. You must have the ability to exercise your own discretion and judgment in what you do.

**[Rosemary]:** Yeah. And you know what I was going to say? Lee, is you know, you went through that such a mouthful, you know, with the for the professional and the education. So some additional points to keep in mind. Generally, having years of experience. So I can't tell you how many clients have said, well, they've been doing this job for us for 10 years, for 15 years. That I mean, doesn't that count for something?

**[Lee]:** No. Right.

**[Rosemary]:** Exactly. No, it does not. So that doesn't. And then the other is I've had people say, well, and so and so we the job requires a BA in this or a Master's in that. All right. Well the BA unfortunate late, not dissing any of us who got, you know, a Bachelor of Arts out there. But no, you heard what Lee said. General education. Right. And so let's put that aside so that, you know, that just doesn't count. Or it won't be enough, I should say. But what I will here, as I just was started to say, is my clients will say or an employer will say, well, the job description requires a Master's in X. And so then I will often ask the question all right. Well, so Lee is in that position. Does Lee have a Master's. Well no he doesn't. But he's got the experience and the skill and we require it I mean the job. Doesn't that count? No. So as Lee said before and we will say it over and over and over again, it doesn't matter what the job post said, it doesn't matter what the job description says.

What matters is, you know, what that person is doing, all right. What are their actual duties? Because let's be honest, we're all guilty of this. You have a job description. I got one, I was responding to a charge. I said, send me a copy of the job description. Literally the date on the description and the job description, the creation date was 2012. All right. So again, you know, it's just all of us fall into that trap. You think, oh, and you know the job description. It's fine. It kind of gives a basic framework. Again, that's why it doesn't matter. So if the DOL comes a-knockin' they're not going to say hand me the job description. They're going to say let me talk to Lee and Rosemarie and Kyla and Ari and everybody else. And let me ask when did... understand what they are actually doing. I and we're also going to talk to Lee. So Lee, tell us what is your background? And Lee's not going to say. He says, well, I don't have a Master's. And well there you go.

**[Lee]:** The master's disappears.

**[Rosemary]:** That's right. Exactly.

**[Lee]:** So and then it doesn't also matter if you have if I... So for example, I take my JD and now I go and work and want to be a pastry chef for example.

**[Rosemary]:** Great point, Lee. Great point. Yes.

**[Lee]:** Not going to work. Yeah. Your degree, the advanced degree that you have has to be towards the profession that you're working for.

**[Rosemary]:** That's right.

**[Lee]:** So there are a lot of my clients, you know, are for some reason, there are a lot of reformed lawyers who wind up going into hospitality and become chefs and things to that nature. So you can only be a chef that's exempt from overtime and following the professional exemption if you have a degree from a culinary school. It does not matter that you have a BA or an MA from Cornell's hospitality program. No, it's if you're a chef, you need a degree from a culinary school, for example. So again, the government being... whether you're being audited, a private lawsuit, does not matter whether McDonald's calls you an assistant manager, whether you do this, or whether your job description says that... what will matter is what reality is. We'll find out what that reality is. And if you're not following these guidelines, you could face potential penalties. So these EAP exemptions, okay. So we talked about.

**[Rosemary]:** Hold on a second: executive, administrative, professional because somebody may be listening and think EAP did I miss something?!

**[Lee]:** Right. Yes. Executive, administrative, professional, E, A, P. So for the E and the A, right if we know what New York's numbers are again \$58,500, a little bit less if ...everywhere but in New York City, Long Island in Westchester, \$62,400. For the professional in New York does not have a number or a threshold and it adopts the federal number. So previously before these changes are going to come into effect from the federal government—and here's what you probably all been waiting for. And we've kept you at your seats for about a half hour. So drumroll please. So as of July 1, and that's if these rules do come into effect as of July 1, these exemption thresholds are rising from \$684 per week to \$844 per week. So for the E and the A, the executive and the administrative, which apply here in New York, if you were following and listening to what Rosemary and I said to you four months ago, you're good. Because you're already paying well above what the federal government requires. And if the professional exemption, you were relying on that and you were paying someone \$684 per week previously and relying on the professional exemption, yes, you do have to move that person up to \$844 per week. But I have good faith belief, Rosemary, that in New York State, very rarely, if at all, can we find anyone who's a professional that was making \$684 per week today. That's not something I think I need to be worried about.

**[Rosemary]:** Yeah, I have to agree with you on that. Lee and the other thing I would add to this. So, I want to make two points. So the first is this is, what Lee just talked about with that increase at the federal level for the P, the professional. And that I think or we think this is one of the reasons people have been coming to us saying, we need the...What are the new rules? What are the new rules? So something else which we'll talk about in a minute or two. So that's the first thing. But the second thing I want to say is Lee just said you have to move them up. So as we discussed four months ago, you have to move them up to that number if you want to claim the exemption, remember, Lee started out saying what does exempt mean okay, you are exempt from the minimum wage requirements, the overtime requirements. All right. So, that was specifically the overtime requirements. So if you have someone—because I work with that lot of not-for-profits. Lee and they'll say, Rosemary, we don't know if we can afford that. And what I've said is, okay, well, what you have to do is do an analysis of the business and in particular, the individuals who are actually performing those duties. All right. And look and see, you know what? and I'll be curious to see, Lee, your thoughts on this, but what I'll say to them is look and see. And a lot of these not-for-profits. People are scheduled 40 hours a week, but because of the meal period, which Lee and I talked about, everybody gets a 30-minute uninterrupted meal period, it actually turns out to be 37.5 hours every single week. So they rarely, if ever, even come close to the 40. Or, you know, they might creep up to 38 or 39, but they're not going to hit, they're not going to work over 40 hours. So it may make sense for you if you're sitting there and you're looking and saying, you know what, our people come in at nine, they leave at five, or they leave at 4:30. You know what? We don't have to worry about overtime. And it may make sense for you financially again, because I work with a lot of not-for-profits to we're just going to leave it at \$684. So again, to be clear, it's not like all of a sudden because the federal government that that has raised their floor, all right, that you then have to because you're in violation. You know, it's only if you want to claim the exemption. Thoughts on that Lee?

**[Lee]:** I think that that's right. and I've had conversely right where I've had clients that said to me, I've got my managers, I can't afford going them up to now \$62,000 here in New York. What should I do? I said, well, still call them your manager, convert them to an hourly rate, pay them an hourly rate, track their hours and you pay them overtime when you go over 40, 40 hours per week and you do the math, do some forecasting and some modelings, you might wind up with some savings if you figure out that these people, as you said, Rosemary, don't work any overtime or very little overtime. Conversely, if you have an employee that you know is working 20, 30, 40 hours of overtime per week, you must raise this up, because what the government will do is convert them back to an hourly employee and then give them overtime in the way that is the most non-beneficial to you, and the amounts of money that we will have to be paid to your employees will be astronomically higher than what it would have been if you would have just paid them the threshold. So it's one of these things here that you've got to look at your business model, look at what you can afford, and then make an informed decision. Knowing that, okay, I can't afford overtime. Convert them to hourly, tell them that they're going to, that we're going to pay them overtime, but you must get your overtime pre-approved, etc., etc. someone works overtime, you pay them for their overtime and you write them up, right for not getting it pre-approved. And that's how you there are. For better or worse, there are solutions to all these problems and that's why we hope you're listening to us. Continue listening to us and continue to reach back and ask us questions for feedback and more information. And what, yeah, please, Rosemary, it looks like you're about to say something...

**[Rosemary]:** Yeah. No, I was going to say, you know, Lee, you know, we've had them sitting, you know, listening to us for and it looks appears to me I was 36 minutes. I wonder if we should maybe take a break and, you know...

**[Lee]:** Do a part two?

**[Rosemary]:** Do a part two. I think we might need a part two here. What do you think...



**[Lee]:** I think that's a great idea. So what I think for the part two. So stay tuned everyone. That part two of what's coming up, we're going to we'll discuss something called "a highly compensated employee." This is a topic that has come up from both, a number of my clients. I'm curious, Rosemary, if you've had that come up as well as I want to hit on what you talked about. Well, because if the attuned listener may have heard, I said two things makes you exempt. And Rosemary, you said three. Your three was a regular salary that means these certain amount and the duties. So I want to talk about the regular salary aspect. Because that is something where people try to... How do I put this, bite away at the edges and try to make someone exempt at a later point. So stay tuned. and we'll be back with part two.

**[Ari]:** The *Labor & Employment Podcast* is available on barclaydamon.com, YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Podcasts. Like, follow, share, and continue to listen. Thanks.

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