



The Bondsman
222 Northeast 27th Street
Oklahoma City, OK 73105



Oklahoma Bondsman Association
222 Northeast 27th Street
Oklahoma City, OK 73105



Office: 405.524.5920
Fax: 405.601.6484
Toll Free: 1.866.374.6257
Website: www.okbondsman.com

October

THE BONDSMAN

2016

BEWARE THE NEW FEDERAL OVERTIME PAY RULES

At the direction of President Obama the US Department of Labor has changed the rules regarding overtime pay for salaried employees working more than 40 hours in a work week. The new rules will become effective on December 1st. While the new rules only affects those employees that are exempted from the minimum wage and required overtime payments, they will change salary payments for many small employers and their employees.

Under the Fair Labor Standards Act any employee paid by the hour must be paid overtime at one and a half times the hourly rate for any work over 40 hours in a work week. The overtime pay requirement does not become active until the 40 hour work level has been reached. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or any other regular "day of rest" as given by some employers.

The "work week" is defined as a recurring period of 168 hours consisting of seven consecutive 24-hour periods. The calculation of when the work week begins and ends is up to the employer, but once set, it cannot be changed easily. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees.

Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the overtime wages were earned.

(NOTE: Under the current law the regular rate of pay cannot be less than the "minimum wage", set at this time as \$7.25 per hour. The new rules do not change the minimum pay at this time.)

The law does provide for "exempt" employees, i.e. those that are exempted from the operation of the minimum wage and overtime pay provisions of the Act. However, to be "exempt" the individual employee must meet certain requirements:

First: the exempted employee must be paid a fixed salary. The salary cannot be subject to reduction based on quality or quantity of work.

Second: the salary must result in a weekly pay of no less than \$913 or \$47,476 annually. (Under the current rules being replaced on December 1, the weekly pay required is only \$455 per week.)

Third: the employee's primary job duty must involve the kind of work associated with exempt executive, or administrative employees.

Again, the employee's job title and/or even their job description does not matter. The individual employee will be determined exempt if their actual job duties are at an executive or administrative level.

A few years ago it was common practice to give an employee a title indicating they had executive or administrative authority, then declare them to be exempt so the employer could avoid paying overtime and even the minimum wage. If there is a wage and hour audit, the auditors will look at the actual job functions, not the job title, to determine if the exemption will stand up. If it fails, there will be fines and back pay for unpaid overtime.

Employers are required to maintain hourly work records for all non-exempt employees. Business management consultants will almost always recommend volunteer hourly records for all employees, including those thought to be exempt, just in case of an audit finding that some of them do not meet the requirements for an exemption. The volunteer records will come in very handy when talking with the auditors about unpaid overtime. Without the record, the auditor is free to calculate the unpaid overtime however they want to.

Wage and hour auditors have what are sometimes called "walk-in inspection rights." Meaning that they can go into a business, unannounced, identify themselves and ask to see the records required by the Act.

The magic number is "40 hours" to trigger the overtime pay. It does not matter what the employer says is a work week. If there is a 35 hour (as an example) work week in the employers personnel policy, the overtime pay requirement does not come into consideration until the 40 hour mark is passed. The time between the 35 hours and 40 hours, as far as pay is concerned, is a matter between the employer and employee. It is not overtime, but it is work time, and some payment method must be worked out.

If an employer is having a problem calculating overtime pay, they should check with their business attorney or CPA for advise.

It must be noted that there is no such thing as "compensatory time off" to make up for overtime one week by taking extra time off the following week. Once the 40 hours is passed, overtime must be paid, unless the employee is exempt under the rules.

OBA CALENDAR

Note: While we will try to stay with these dates, they are tentative and subject to change. Please check the OBA website for updates.

Thursday, October 20	10:00 a.m. – October OBA Board Meeting @ OBA
Monday, October 24	11:00 a.m. Associated Bail Agents of Tulsa (ABAT) with Tulsa County Jail Tour @ David L. Moss Center/ Training Room
Monday, November 28	11:00 a.m. Associated Bail Agents of Tulsa (ABAT) @ David L. Moss Center/ Training Room
Thursday – Friday, December 1 & 2	8:00 a.m. – 5:00 p.m. Pre-Licensing Education #4 @ OBA
Wednesday, December 21 (Tentatively Scheduled)	10:00 a.m. OBA Board of Directors at Tulsa Courthouse with ABAT Christmas Luncheon immediately following
Thursday, January 19	10:00 a.m. – January OBA Board Meeting @ OBA
Monday, June 5	OBA Annual Membership meeting @ OBA 2:00p.m.
Tuesday, June 6	CE #1: Sheraton Reed Center, Midwest City
Tuesday, June 20	CE#2: Hard Rock Hotel & Casino, Catoosa (Tulsa)
	www.okbondsman.com

NEW BONDSMAN LICENSES

Nicholas Carrier	Muskogee County
Jacobi Harper.....	Grady County
Dixon Harper	Grady County
Wade Henderson.....	Wagoner County
Terry Horton	Tulsa County
Brent Maples.....	Delaware County
Keith Miller.....	Garvin County
Paul Northcutt III	Kay County
Kyle Norwood.....	Bryan County
Sean Norwood.....	Canadian County
Bret Pevehouse	Muskogee County
Regina Pevehouse	Muskogee County
Roger Stevens	Tulsa County
Stephanie Terry	Pontotoc County
Billy Wickliffe	Cherokee County

HALLEY-TERRELL NEW OBA SECRETARY

Tracey Halley-Terrell is the new Secretary and member of the OBA Board of Directors. She is the owner of A Absolute Bail Bonds in Oklahoma City. Her first day in her new office was August 24 during the Board's regular meeting. She replaces Gina LeBoeuf, long-time officer and board member. LeBoeuf tendered her resignation in order to spend more time on her personal affairs.

In Memoriam

Paul Northcutt Jr. (08/16)
Kathleen Wood (08/16)

REMINDERS FROM THE OKLAHOMA INSURANCE DEPARTMENT

The OID Office of General Counsel and the Bail Bond Division remind bond agents of the following rules and requirements.

- Minimum fine for violations of the Bail Bond Code is \$250.
- Respond to (any inquiry from) the OID Bail Bond Division (ASAP).
- Read your email. Every bondsman is required by law to keep an updated email address, and the Department uses it to get information to you. There is no excuse.

(CONT'D ON PAGE 3)

LEGISLATED CHANGES FOR 2016

The following information regarding activities affecting bondsmen during the 2016 Oklahoma Legislature was reported by OBA lobbyist Gary Huddleston and Oklahoma Insurance Department Assistant General Counsel Buddy Combs.

The summary of each of the two bills of interest to bail bondsmen only covers those parts of the new law that directly affect the bail bond industry. Each entire bill, as signed by the Governor, is available on the Oklahoma Legislature's web site at www.oklegislature.gov. Search by bill number.

HB2922 – Becomes effective November 1, 2016. Partial summary as follows:

This was the one bill of most interest to the bail bond industry that was considered by the 2016 session of the Oklahoma Legislature. It contained numerous sections, only a few of which applied to bondsmen.

One section is a terminology clean up that clarifies confusing uses of the terms "surety" and "insurer". "Insurer" is now defined as any surety company, multicounty agent bondsman, or professional bondsman. "Surety" is now used only to describe a surety company or surety bondsman. "Multicounty agent bondsman" is inserted into the law where appropriate.

Another new section amends 59 O.S. §1302(C) to provide all bail bondsman investigative files are confidential and not subject to open records request. Old law specified that open bail bondsman investigative files were confidential, but that closed files were public record.

New law treats OID Investigations of bail bondsmen the same as investigations of agents, adjusters, and brokers. However such files may be opened if properly ordered by a hearing examiner, the Commissioner, a judge, or legislative committee.

Final administrative actions are always open records

Professional Bondsman Licensing is changed by amendments to 59 O.S. §1306(A)(2).

An applicant for a professional bondsman license shall have been continuously licensed as a surety, cash, or property bondsman in Oklahoma for a minimum of 2 years immediately prior to the date of application. A professional bondsman license is an advanced license type that should require a certain level of experience in the industry

Prohibited Conduct is expanded by amendments to 59 O.S. §1310(A)(29) & (32).

It is now a violation to submit an "uncollected" check or EFT to the Insurance Department. Uncollected means there is money in your account but it cannot be transferred for some reason – usually encumbered elsewhere. It is already a violation for submitting "insufficient" checks or EFTs.

The new law makes it a violation to fail to accept or claim a certified mailing from any district or municipal court clerk. It is already a violation to fail to accept or claim certified mail from the Department. Failure to do so subjects the bondsman to censure, suspension, revocation, or denial of a license, or a fine of \$250-\$2,500.

Allowed activities by a suspended or former bondsmen are covered by amendments to 59 O.S. §1311.3(C).

Current Law says it is a felony to perform the acts of a bondsman without a license or to aid another in performing the acts of a bondsman without a license. However former bondsmen are an exception. A suspended or revoked bondsman may contract with a licensed bail enforcer to apprehend and surrender clients, and a suspended or formerly licensed bondsman may

continue to submit monthly reports to the Department in order to monitor his or her outstanding liability.

Monitoring and discharging outstanding liability is a prerequisite for reinstatement of a suspended bondsman

One bondsman assisting another is allowed by new law amendments to 59 O.S. §1311.4.

Under the new law a bondsman may assist another bondsman in apprehending and surrendering clients if he or she has been continuously licensed as a bondsman in Oklahoma for at least 5 years immediately prior to providing assistance, or if he or she is duly appointed by the same insurer as the licensed bondsman seeking assistance. The burden is on the bondsman seeking assistance to verify the assistant bondsman's eligibility.

Records Retention changed by amendments to 59 O.S. §1314(C).

Under current law a bondsman must maintain all usual and customary records at his or her place of business for 3 years following "the date of the transaction". The new law says that records must be maintained for 3 years following (1) the date the liability of the bondsman on the bond is discharged by the court or (2) the date collateral is returned by the bondsman to its lawful owner, whichever is later. If an appearance bond is never executed and filed with the court, then records must be maintained for 3 years following the date the documents were prepared.

Documents to be provided to payors is covered by new law amendments to 59 O.S. §1316(C).

In addition to providing a payor or indemnitor with a proper receipt, a bondsman must also provide them copies of any agreements executed relating to the appearance bond. This means any document signed by that person. The bondsman does not have to provide them any document that does not relate to them.

Amendments to 59 O.S. §1328(B) reinforces requirement to carry license. The new law plainly states "(a)ny bail bondsman engaged in the apprehension or surrender of his or her defendant client, and any bail bondsman assisting another bondsman pursuant to Section 1311.4 of this title, shall *at all times* while engaged in the apprehension or surrender of the defendant client have his or her bail bondsman license in his or her possession and *shall present the license to any law enforcement officer immediately upon request.*" (Emphasis added.)

SB976 – Becomes effective November 1, 2016. Partial summary as follows:

Multicounty Agent License Requirements – Amends 59 O.S. §1306.1(A) (1)

An applicant for an MCA license shall have been continuously licensed as a professional bondsman for at least 2 years without suspension or having any unpaid forfeitures prior to the date of the license application. Unpaid forfeitures means forfeitures for which the professional bondsman has been subject to a final administrative action by the Department for not paying the forfeiture within the appropriate time period

Deferred Prosecutions Exonerates Bond – Amends 59 O.S. §1327(D)

When a deferred prosecution is granted by the court as provided by law, the undertaking and bondsman and insurer shall be exonerated from further liability.

OBA 2016-17 DUES

Current By-Laws of the OBA read as follows:

"The Board shall, by two thirds (2/3) vote, set membership dues and other fees and charges. This action shall take place at the August Board meeting each year, preceding commencement of the next OBA fiscal year." The Board met on August 24 and adopted the following dues payment schedule:

DUES PAID BEFORE NOVEMBER 1, 2016 Pay \$325.00

NOTE: This amount includes an additional \$25 discount if paid before November 1st approved by Board on 8/24/16!

Remember – Dues must be hand-delivered or postmarked on or before October 31st!

Dues paid November 1 or later, but by December 31, 2016 Pay \$450.00

Remember – Dues must be hand-delivered or postmarked on or before December 31st!

Dues paid January 1, 2017 up to March 31, 2017 - NO DISCOUNT - Pay \$550.00

Remember – Dues must be hand-delivered or postmarked on or before March 31st!

PLEASE NOTE PER OBA BY-LAWS: Dues not paid by March 31st shall result in the delinquent member's suspension from membership and **no voting rights during elections held in June!** Suspended members are **NOT** eligible to attend education classes, including continuing education required by Oklahoma Statutes, until their dues for the current fiscal year are paid in full.

Please pay all dues in full before March 31, 2017!

CONT'D FROM PAGE 1 REMINDERS FROM THE OKLAHOMA INSURANCE DEPARTMENT

- Review your reports before submitting them to OID. Simple, easily identifiable mistakes cause most of the required amended reports.
- Submitting an insufficient funds EFT to the Department is a violation. You face a \$25 fee and could be fined at least \$250.
- Notice of return to custody: Following a forfeiture, if the defendant has been returned to custody as defined in 59 O.S. § 1332(C) (4), the bondsman shall file notice with the court clerk of the county where the forfeiture occurred by the ninety-first day after receipt of the order and judgment of forfeiture, certifying the defendant was returned to custody by the ninetieth day after receipt of the order and judgment of forfeiture. Failure to provide notice prior to the ninety-first day shall be a violation of 59 O.S. §1310(A)(2).
- 59 O.S. §1316(C) requirements: Any receipt provided by a bondsman shall be individually numbered and include:
 - a. the precise amount of the fees, premium, collateral, or other payments received by the bondsman,
 - b. the full name of the defendant,
 - c. the defendant's case number if it is available, and
 - d. full name of the individual(s) presenting the payment.

YOUR DOLLARS NEEDED BY BPAC

By contributing your dollars you can help the OBA have an impact on the upcoming elections for the Senate and House of Representatives in Oklahoma. As you well know, 2016 is a major election year at both the state and federal level. While the OBA-Political Action Committee (BPAC) does not make contributions to nation-wide races, it does make contributions to its many friends running for the Oklahoma Legislature.

The candidates are vetted carefully by the OBA President, Dudley Goolsby; the Association's legislative and PAC chairman, Barry Tucker; and the OBA lobbyist, Gary Huddleston, to determine which should receive campaign contributions from BPAC.

Your contribution of \$25 to \$100 (or more!!) will help us support our friends in the Oklahoma Legislature that have helped us over the last few years.

A BPAC contribution must be on your personal check, or on the check of a non-incorporated business, such as an LLC. Corporate contributions are illegal in Oklahoma.

Please make your check payable to BPAC and mail to the Association's headquarters at 222 NE 27th St., Oklahoma OK 73105.