

# On the Quandary of Required Overtime

by Zachary Pitts

# Introduction

Why I am here:

To inform you of your rights as a technical employee, to list some of the current overtime issues, and perhaps inspire you with a bit of history.

# Definition

Overtime, noun<sup>1</sup>

1. Time worked over and above a person's regular or set working hours. Also: payment for work performed in such extra time.



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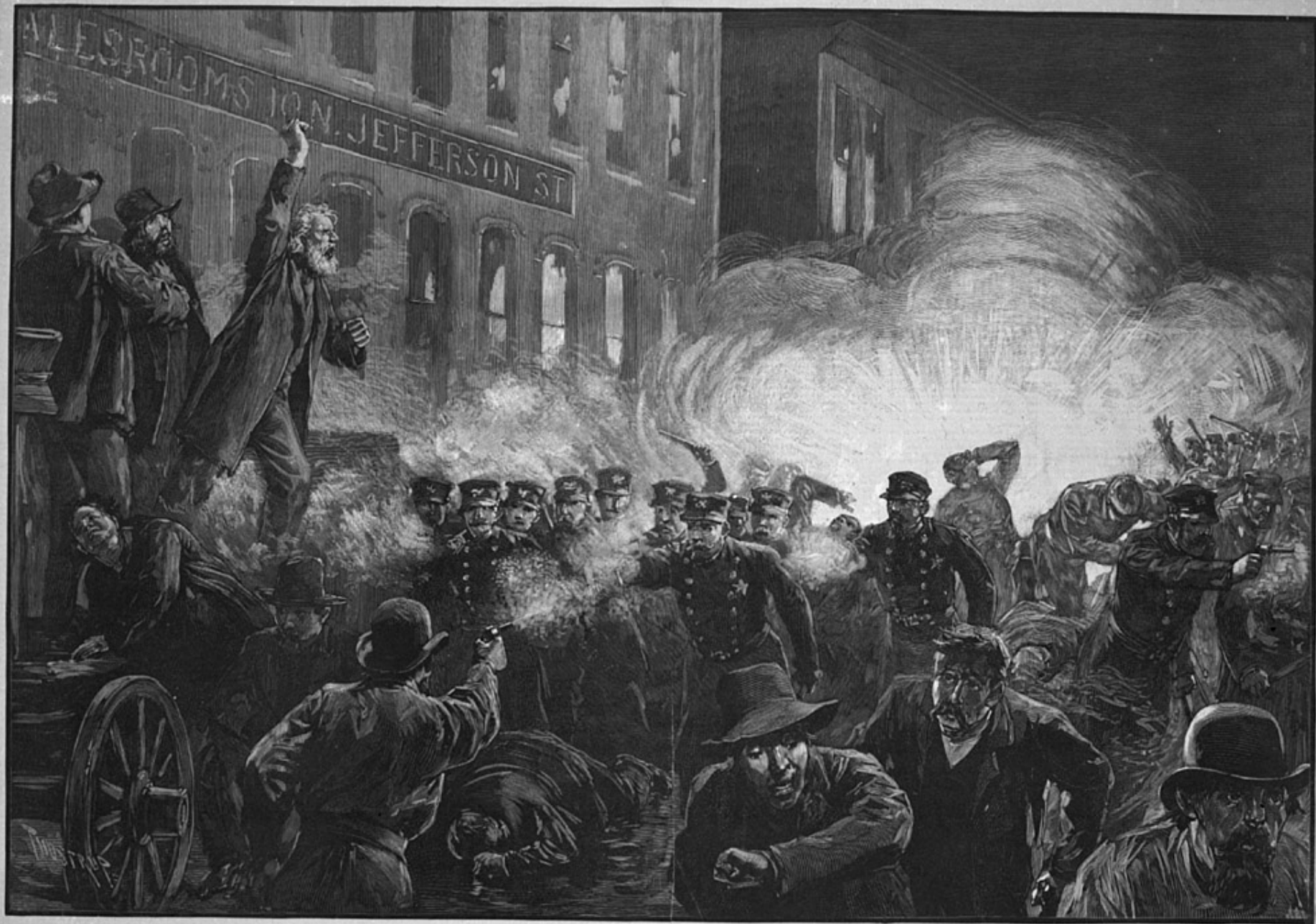
# A little history...

For much of the rest of the world outside the U.S., people celebrate May Day, May 1st, as a labor day holiday.

What some people do not realize is that May Day actually has its roots in the U.S. from an event in 1886.

On May 1st, 1886, an organized general strike was called in support of the concept of the eight hour workday, with an estimated half a million people not coming to work.

A few days later, a meeting was called in Haymarket Square in Chicago to hear speeches to continue the actions.



THE ANARCHIST RIOT IN CHICAGO—A DYNAMITE BOMB EXPLODING AMONG THE POLICE.—DRAWN BY T. DE TULLOUP FROM SKETCHES AND PHOTOGRAPHS FURNISHED BY H. JEANNEY.—[SEE PAGE 215.]

# Aftermath...

Eight men were arrested, only one of which was actually at Haymarket Square that day. They were the leaders in Chicago of the movement for the eight hour workday.

"The evidence against the eight anarchists was their ideas, their literature..."<sup>7</sup>

After over a year of trials, 4 of the men were hanged and one committed suicide. International outrage led to the creation of the May Day holiday.

The U.S. did not adopt the eight hour workday until 1938.

# Legal definitions

What are the federal laws that set the 'regular' hours?

According to federal law, a non-exempt employee paid by the hour "must receive overtime pay for hours worked in excess of 40 in a workweek of at least one and one-half times their regular rates of pay".<sup>2</sup>

# Exempt?

Who is exempt?

Specifically and more related to most of us, are technical workers exempt from collecting overtime?

The complicated answer is that it depends.



# Federal Law

To qualify for the computer employee exemption, the following tests must be met:<sup>3</sup>

- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
  - The employee's primary duty must consist of:
    - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
    - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
    - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
    - 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

# Comments on exemption

Does not apply to workers in manufacturing or repair of computers.

Does not apply to workers whom primary duty is the simple use of software, no matter how complex the software.

Does apply to those who apply creativity and discretion when crafting the solutions to problems, especially if the problems are new and not repetitive day to day.

# Recent legal issues

Just days ago, a Utah based "call center company has paid nearly \$2 million to settle complaints it failed to pay workers for overtime."<sup>4</sup>

In 2006, computer giant IBM paid "a total of \$65 million to 32,000 technology workers who claimed the company illegally withheld overtime pay."<sup>5</sup>

Also in 2006, Electronic Arts paid "\$14.9 million to settle an overtime lawsuit that highlighted the long hours and often stressful working conditions of programmers across the rapidly growing industry."

# My Opinion

Not all overtime is equal.

Do not allow yourself to be locked into expected overtime.

Be aware!

# Conclusion

Overtime is almost a given in a computer related job, at least some days.

Always be aware of your rights, and of the history that led to those rights.

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