



### **Wage & Hour Issues**

This summary provides a very simple explanation of certain issues pertaining to the classification and payment of employees. This summary, and any webpages linked in this summary, are not intended to be and are not legal advice. Instead, they are offered as an introduction to some of the issues you should consider as you deal with your employees.

#### **What are the Primary Laws Relating to Employee Wages and Hours?**

Employee wages and hours are governed by a combination of federal and state laws, including:

- The Fair Labor Standards Act (or “FLSA”), which is a federal law that governs working hours, minimum wage, and overtime compensation,
- State minimum wage laws, and
- State laws that address working hours, overtime limitations and overtime compensation, and other issues.

This summary primarily addresses the FLSA and regulations issued by the federal government under the FLSA. State laws that impact employee wages and hours can vary significantly, and may impose requirements more stringent than the FLSA. For example, many states set a higher minimum wage than the federal minimum wage. You should investigate the laws of each state in which you have employees to understand whether and how state laws may impose more stringent requirements.

#### **What Is Non-Exempt Salary?**

Non-exempt salary is a fixed payment protected by the FLSA. Under the FLSA, in the workplace, you have two types of employees: non-exempt and exempt. Non-exempt employees are awarded overtime pay; exempt workers who are not.

#### **What Determines Exempt or Non-Exempt Status?**

The majority of employees who are covered by the FLSA are considered non-exempt. In most cases, three factors control how an employee is classified:

- Type of work
- Amount of wages
- Manner of pay (hourly or salary basis)

#### **What Is Significant About Salaried Exempt Workers vs. Non-Exempt?**

When an employee paid on a salary basis is also an exempt worker, he or she receives at the very least the minimum weekly wage but is not subject to the overtime rules of the FLSA. To be exempt, the employee must meet certain criteria which include, among other things, the type of responsibilities and duties he or she does.

With a few exceptions, if an employee works in an administrative, professional, or executive role, he or she is exempt. Since individuals in these occupations must function a majority of the time independently and perform high-level work, which contributes to the management of the employer, they are in most cases exempt from the FLSA rules. Exempt salaried workers are not required under the FLSA to receive overtime compensation even if fulfilling their duties includes working more than 40 hours during a workweek.

Non-exempt salaried employees receive fixed wages for working a determined number of hours weekly. However, should they exceed those hours in any given week, under the FLSA they must be paid for the extra hours in overtime pay. An hourly rate is calculated based on the salary amount. For example, a salaried employee making \$59,000 per year makes the equivalent of \$28.36 per hour in a 40-hour workweek. Just like an hourly worker, the overtime rate would be one and one-half times the regular hourly rate, or time and a half - equaling to \$42.54 per hour exceeding 40 hours during the workweek. The FLSA provides more than one way of calculating the hourly rate, and employers must take care to use the method that fits the circumstances, as prescribed in regulations issued under the FLSA.

### **Many Employers Have Incorrect Thinking About Non-Exempt Salary**

It is a common misconception of employers to believe that by having salaried employees, and by not having them work over 40 hours, the employer will not have to bother with tracking time. Many employers choose to pay employees on a salary basis because it is easier to estimate what the payroll costs will be from month to month. In their eyes, they see less hassle and less paperwork because they will pay out a set amount on a set pay cycle. Many employees tend to enjoy the stability the salaried wages provide. Additionally, the worker typically has no problem with the arrangement because they are not required to do overtime.

Unfortunately, employers can run into problems legally with respect to their non-exempt salaried employees by failing to keep track of hours. While it is true that an employer can pay workers how they choose, the FLSA still requires that the employer show that its employees are at least receiving the minimum wages according to the regulations. Also, if an employee is non-exempt, he or she must still receive proper overtime pay for the hours worked over 40 hours during a workweek. Keeping good records of hours worked can be an employer's best defense if questions arise over whether employees have been properly compensated under the FLSA.

### **An Employer's Responsibilities Related to Non-Exempt Salaried Employees May Be Pitfalls**

There are a few obligations a company must consider to be compliant with the regulations for tracking its non-exempt workers' hours:

- An employer must accurately determine what the non-exempt salaried employee's regular rate of pay is per hour so that the company can calculate and track overtime hours and overtime pay appropriately. This must be determined on a weekly basis under the FLSA. If an employer pays on a salary per year basis, which is standard for most businesses, the employer can get the weekly hourly rate by first dividing the annual salary by the number of weeks in the year to determine the weekly salary, and then dividing the weekly salary by the number of hours actually worked by the employee in that week. If the salaried non-exempt employee works varying overtime hours from week to week, the hourly regular rate of pay will also vary from week to week. For example, if an employee is paid an annual salary of \$21,060, then the weekly salary would be \$405. If that employee works 45 hours in that week, the regular rate of pay for that week is equal to the \$405 straight-time salary divided by 45 hours, or \$9.00 per hour. The overtime rate of pay for the 5 overtime hours work would be equal to 5 hours multiplied by \$4.50 (i.e., one-half of the regular rate of pay for the week), or \$22.50.
- An employer also must be sure that a standard calculation method is in place that applies to all salaried employees and that everyone that deals with payroll at the organization is aware of it.
- Employers have to deal with and track absences as well. An employer is not required to count vacation, holiday and sick day pay toward the weekly salary amount if the employee does not work during those periods.

Even with deductions for absences, the employer is still obligated to pay overtime when necessary. So, some companies view these administrative responsibilities as a pitfall and begin to question its decision to make some non-exempt employees salaried in the first place.

### **What Employees Are Exempt?**

Two of the main exemptions from overtime pay requirements relate to “highly compensated employees” and to employees whose regular pay, combined with their job duties, make them exempt.

### **What is a “Highly Compensated Employee?”**

In general, an employee is exempt from overtime pay requirements as a “highly compensated employee” if he or she is paid on a salary basis at a rate of at least \$132,964 per year. Beginning on January 1, 2025, that rate will increase to \$151,164 per year.

### **What Employees are Exempt on the Basis of Job Duties?**

The descriptions and job titles of an employee are not the only or most significant factor when it comes to determining whether to classify an employee as exempt or non-exempt. An example of this would be the fact that a secretary would still do the work of a secretary if he or she was called an administrative assistant. What is of the most significance when determining status is the employee’s compensation and the set of work responsibilities the employee performs.

Job duties that can be exempt come under five categorizations:

- Professional
- Administrative
- Executive
- Computer Employees
- Outside Sales

Employees whose job duties fit within the professional, administrative and executive employee categories are exempt from overtime pay requirements if they are paid on a salary basis at a weekly rate not less than \$844.00 per week; beginning on January 1, 2025, that weekly rate must be not less than \$1,128.00 per week.

Computer employees must be paid the same weekly rate if they are paid on a salary basis, or at least \$27.63 per hour if they are paid on an hourly basis, in order to be exempt.

The exemption for outside sales employees has no salary requirement, so that exemption is based on job duties alone.

Here is a summary of the job duties for each exempt categorization. In addition to meeting the minimum compensation requirement (if applicable), an employee must perform at least one of these job duties on a regular and continuing basis to fit within the exemption.

#### **Professional Job Duties:**

Work performed that has a professional exemption must:

- involve the employee exercising his or her judgment and discretion
- require advanced education and specialized training
- mainly be intellectual in function

Employees could be considered for professional exemption if they have attained education in industries that require more academic training than mechanical arts or skilled trades. The training will usually go beyond that of college and come with an advanced degree. However, if an employee has received an equivalent level of education in an alternative way and does work that is similar to the work done by employees with an advanced degree, the worker could be considered exempt.

### **Administrative Job Duties:**

Administrative duties probably have the most elusive and inexact definitions out of the three categories on which to base a determination. There is a regulatory definition, however, and it states administrative duties are exempt when they:

- Connect directly to the general business operations, employer's customers, or management
- Include the use of discretion and independent judgment regarding important matters
- Are work responsibilities accomplished in an office or are not manual

When employees are high-level with the primary job of making sure the business continues to operate, they are likely to be administratively exempt. A valuable rule of thumb would be for an employer to distinguish them from being operational or production. In other words, administrative employees are not responsible for making any product the company may sell. They are viewed as "staff" and not as "line" workers because they give support to the production and operational team.

Administrative duties may involve some of the following:

- Finance and payroll
- Internet, database, and network administration, or some other computer-related jobs
- Advertising and marketing
- Human resources
- Tax and accounting
- Regulatory and legal compliance
- Investment, government, public, or shareholder relations
- Records maintenance

Not all administrative work qualifies as exempt work. Even if the job of an employee is a financial asset to the employer, it does not automatically make the worker exempt. Clerical workers are an example of when the office or nonmanual duties of an employee are not exempt. Administrative work is exempt when the employee has to exercise judgment and possesses the authority to make intelligent decisions that will significantly affect either part of or the whole business when it comes to particular situations.

The employer can ask a few qualifying questions to aid in making their determination:

- Does the employee have the power to commit the company to financial obligations that will have a substantial impact on business?
- Does the worker not need approval beforehand to stray away from company policy?
- Do the assignments the employee must handle involve the overall function of the business?
- Can the worker use his or her authority to make a company policy?

If an employee works on a help desk, answers telephones, files papers, fill out forms or routinely prepares reports, it is unlikely the work is exempt. Although the duties are administrative, they are not qualified for exemption because they are not high-level.

It is uncommon for the work of secretaries to be exempt, for example. However, the secretary of the CEO would may well be high-level and could be an administratively exempt employee. By contrast, employers may provide an employee with an attractive title for his or her position, like "administrative assistant." Then when it comes time to evaluate the work that the worker is required to perform, it may be that in fact his or her obligations are no more than non-exempt clerical duties.

### **Executive Job Duties**

Executive work responsibilities are considered exempt if the employee:

- Regularly supervises two or more other workers

- Has a primary function that is management
- Gives input that is given considerable weight about assignments, promotions, firing, or hiring

It is not necessary for an employee to have the final say when he or she gives input into staffing within the company but his or her suggestions must have a genuine influence that is highly regarded and taken seriously by higher management. Having input must be a part of the employee's job regularly for it be deemed exempt.

To determine if an employee's primary duty is managerial, an employer should look for whether the worker runs a full shift or an entire department. In many cases, to make a determination, a case-by-case evaluation may be required.

#### **Computer Employee Job Duties**

Computer employee job responsibilities are considered exempt if:

- The employee is employed as a computer systems analyst, computer programmer, software engineer or similarly skilled worker in the computer field,
- The employee's primary duty consists of:
  - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specification;
  - The design, development, documentation, analysis, creation, testing or modification of computers systems or programs, including prototypes, based on and related to user or system design specifications,
  - The design, documentation, testing, creation or modification of computer programs related to machine operating systems, or
  - A combination of the duties listed above, the performance of which requires the same level of skills, and
- The employee is not engaged in manufacturing or repair of computer hardware or related equipment.

#### **Outside Sales Job Duties**

Outside sales job responsibilities are considered exempt if:

- The employee's primary duty is making "sales", or obtaining orders or contracts for services or for the use of facilities (for example, a physical space, or radio/TV time) that will be paid for by a client or customer, and
- The employee is customarily and regularly engaged away from the employer's place of business.

Under the FLSA, "sales" includes any sale or exchange, as well as contracts to sell, consignment, shipment or sale or other disposition.