



## EXEMPT VS. NON-EXEMPT

Is there a clear-cut definition of what makes an employee exempt or non-exempt? The Fair Labor Standards Act (FLSA – Federal Law) sets out a duties test for each of its white-collar exemptions. Remember that exempt means exempt from wage and hour laws. In your state, there may be in addition to the exemption test below a minimum required salary.

The following “test” should help you decide whether or not your employee is **exempt** (not eligible for overtime/salary) or **non-exempt** (eligible for over-time / hourly).

### Executives (Exempt)

The exemption applies to these employees:

- Their primary duty is management.
- They direct the work of two or more full-time employees.
- They have authority to hire and fire, or make recommendations regarding hiring and firing.
- They regularly exercise a high degree of independent judgment in their work.
- They don't devote more than 20% of their time to non-managerial functions (40% in retail and service establishments – 50% in California per the Industrial Wage Orders).

### Management/Supervisors (Exempt)

The exemption applies to these employees:

- Their primary duty is office or non-manual work which relates to their employer's management policies or general business operations.
- They regularly exercise discretion and judgment in their work.
- They either assist a proprietor or executive, perform specialized or technical work, or undertake special assignments.
- They don't devote more than 20% of their time to non-administrative functions (40% in retail and service establishments – 50% in California per the Industrial Wage Orders).

### Professionals (Exempt)

The exemption applies to these employees:

- They work in fields requiring advanced knowledge and education, and they do original and creative work in artistic fields.
- They exercise discretion and judgment.
- Their work is intellectual and varied in character and can't be accomplished according to a time schedule.
- They don't devote more than 20% of their time to non-professional functions (50% in California per the Industrial Wage Orders).
- They are licensed or certified by the State of California and primarily engaged in the practice of one of these recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting (Per the California Industrial Wage Orders).
- Pharmacists and registered nurses are not considered exempt professional employees except for certified nurse midwives, certified nurse anesthetists or certified nurse



practitioners who are primarily engaged in performing duties for which certification is required.

- Computer software employees are exempt if the employee's hourly rate of pay is not less than forty-four dollars and sixty-three cents (\$44.63).

### **Outside Salespersons (Exempt)**

The outside sales exemption applies to employees who make sales or obtain orders away from their employer's place of business and who don't devote more than 20% of their time to non-sales functions.

Other factors to consider when defining as exempt include, but are not limited to:

- Whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices.
- Whether the employee carries out major assignments in conducting the operations of the business.
- Whether the employee performs work that affects business operations to a substantial degree.
- Whether the employee has authority to commit the employer in matters that have significant financial impact.
- Whether the employee has authority to waive or deviate from established policies and procedures without prior approval, and other factors set forth in the regulation.

One of the chief differences between exempt and non-exempt employees is in how they are compensated. Exempt employees are "exempt" from the FLSA regulations governing overtime pay and minimum wage. To qualify for an exemption under the FLSA, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. The Act does not limit either the number of hours in a day or the number of days in a week that an employer may require an employee to work, as long as the employee is at least 16 years old (state laws may differ). Similarly, the Act does not limit the number of hours of overtime that may be scheduled.

However, the Act requires employers to pay covered non-exempt employees not less than one and one-half times their regular rate of pay for all hours worked in excess of 40 in a workweek. Exempt employees may be expected to complete their assigned job duties without additional compensation even if it means showing up early or staying late in the office.

Employees not falling under one of the exemptions must, according to federal law, receive the existing federal minimum wage rate for the first 40 hours worked in a workweek. After that, they must be paid not less than one and one-half times their regular rate of pay for all hours worked in excess of 40 in a workweek.