

# FLSA FACT SHEET

## Exempt vs. Non-Exempt

### What is the FLSA?

The Fair Labor Standards Act (FLSA) is a federal law that sets minimum wage, overtime pay, and other employment standards that employers must comply with.

### Non-Exempt Employees

The minimum wage for covered nonexempt workers is not less than \$7.25 per hour. With only some exceptions, overtime ("time and one-half") must be paid for work over forty hours a week.



**\$7.25**  
per hour



**40+ HOURS**  
a week is overtime



**IRONWOOD**  
BUSINESS CONSULTING



info@ironwoodbc.com



888-743-5238



www.ironwoodbc.com

### FLSA



The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments. The Wage and Hour Division of the Department of Labor administers and enforces FLSA.

### KEY ELEMENTS



Exempt vs. Non-Exempt



Overtime



Wage

### COMMON MISTAKES EMPLOYERS MAKE



#### Misclassification

1

One of the most common mistakes that employers make is misclassifying employees as exempt from overtime pay when they should be classified as non-exempt. Exempt employees must meet specific criteria, including earning a salary above a certain threshold and performing certain job duties.

#### Failure to pay all hours worked

2

Employers must pay non-exempt employees for all hours worked, including time spent working before or after scheduled shifts, and time spent working through meal and rest breaks.

#### Illegal Deductions

3

Employers must comply with strict rules regarding deductions from employee paychecks. Deductions for items such as uniforms or tools must not reduce the employee's pay below minimum wage or cut into overtime pay.

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### Who is Exempt?

The Fair Labor Standards Act (FLSA) provides exemptions from minimum wage and overtime pay for certain employees who meet specific criteria.

### Exempt Employees

Exempt employees must receive a salary regardless of the quantity or quality of work performed, with some limited exceptions. Employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$684\* per week.



**\$684**  
Per Week



### DUTIES TEST

Executive, Admin, Professional, Outside Sales, Computer, Highly Compensated

### DUTIES TEST



#### Executive

1

The primary duty is managing the enterprise, direct the work of at least 2 full-time employees, must have the authority to hire/fire (or recommendations are highly considered).

#### Administrative

2

The primary duty must be the performance and management of office/non-manual work related to management/general business and can exercise discretion and independent judgment. This is aimed at admin managers, not assistants.

#### Professional

3

Primary duty must be work requiring advanced knowledge, advanced knowledge must be in a field of science or learning, and knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

#### Outside Sales

4

Primary duty must be making sales or obtaining orders or contracts paid by the client or customer and must be customarily and regularly engaged away from the employer's place or places of business.

#### Computer Related

5

The employee must be employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.

#### Highly Compensated

6

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.



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For more information on exemptions, review the WHD Fact Sheet:

[CLICK HERE](#)

# FLSA FACTSHEET

## Exempt vs. Non-Exempt

### What is the Salary Basis Test?

The salary basis test is a series of stipulations that may exempt an employee from being eligible for overtime pay. The salary basis test says the employee must be paid a predetermined, fixed salary. This means their salary cannot go up or down based on the quality or quantity of their work.

### Other Considerations:

- Breaks
- Deductions
- Record-keeping
- State/Local Laws

### COMMON POSITIONS THAT CAUSE CONFUSION

Below are some common job titles that cause employers confusion when determining exemption status. We've also included some helpful questions to ask when trying to determine exemption status.



Administrative Assistants



IT Workers



Managers



Salespeople



HR Professionals



Customer Service Reps

### QUESTIONS TO ASK

- What is the employee's salary?
- What are the employee's job duties?
- Does the employee have the authority to hire or fire other employees?
- Does the employee exercise independent judgment and discretion in their work?
- Does the employee have advanced knowledge in a field of science or learning that is customarily acquired by a prolonged course of specialized intellectual instruction?
- Does the employee spend more than 50% of their time performing exempt duties?
- Does the employee receive a salary regardless of the quantity or quality of work performed?



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