

The Power of Simplicity**Exempt vs. Non-Exempt Employees: What are the Differences?**

One topic that can generate ongoing confusion for business owners is the classification of an employee as exempt or non-exempt. This can be compounded by the fact that failure to comply with the Fair Labor Standards Act (FLSA) and applicable state and local laws and regulations by misclassifying an employee may result in costly penalties.

"As an HR consultant, I usually work on employee classification with new clients. The reason is actually very simple. The biggest misconception many employers have regarding exempt vs. non-exempt is that the method of compensation alone determines status," says Robert Sanders, Paychex HR consultant.

Defining exempt vs. non-exempt employees

Before addressing some misconceptions, make sure you understand key differences between exempt and non-exempt employees.

Non-exempt employee: The FLSA requires that non-exempt employees in the United States be paid at least the federal minimum wage for all hours worked plus overtime pay at time and one-half times the regular rate of pay for all hours worked over 40 hours during a workweek.

Exempt employee: The FLSA provides an exemption from both minimum wage and overtime pay for employees who are employed as bona fide executive, administrative, professional, and outside sales employees. The FLSA also exempts certain computer employees.

The FLSA 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 and local laws may differ). Similarly, it does not limit the number of hours of overtime that may be scheduled. 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.

Job titles do not determine exempt status. An employee may have an executive, professional, or administrative title, but that doesn't mean they're automatically eligible for an exempt classification.

Compensation and job function

One of the chief differences between exempt vs. non-exempt workers is in how they are compensated. Exempt employees are generally "exempt" from the FLSA regulations governing overtime pay and minimum wage.

States differ in overtime laws, but federal regulations use a 40-hour workweek as the measurement. An employer is not obligated to pay overtime wages when an exempt employee works more than 40 hours in a workweek. For employers, this classification removes their obligation to pay overtime and track hours worked under the FLSA. However, to qualify for an exemption under the FLSA, employees generally must meet certain tests regarding their job duties outlined by FLSA regulations and be paid on a salary basis at not less than \$455 per week.

Keep in mind that job titles do not determine exempt status. An employee may have an executive, professional, or administrative title; however, that does not mean that employee is automatically eligible for an exempt classification. Rather, it is based on the duties the employee performs.

"FLSA status is driven by what you do in terms of job function, not how you are compensated," Sanders explains. "Although it does follow that most of the time non-exempt employees will be paid on an hourly basis and exempt employees will be paid a salary, it's not always the case. For example, you can have a non-exempt employee paid a salary. The key is understanding that status is not determined by the method of compensation."

Benefits for exempt vs. non-exempt employees

Exempt employees typically receive their full salary every pay period, regardless of the quantity or quality of work performed, thus providing the comfort of a reliable pay schedule. Depending on their ability to get work done, they may spend less time in the office than non-exempt employees.

Since non-exempt employees are paid for every hour they work, they know precisely how much their time is worth. In general, their responsibilities are more limited than those of exempt employees, which may result in less stress concerning business operations.

Consequences of misclassification

Incorrectly classifying an employee can result in fines, penalties, and payment of back wages. Make sure you adhere to the following best practices to avoid the expensive consequences of a misclassification:

- Review and understand the rules and regulations outlined by the FLSA regarding exempt vs. non-exempt classifications.
- Next, turn your attention to your state. "The second review should be based on the employer's state. Some states have their own regulations," notes Barbara Roshay, Paychex HR consultant.
- Consistently review, update, and use job descriptions to ensure employees performing similar duties are classified consistently. "The key functions and responsibilities of a given job position will dictate whether that position can qualify for one of the limited 'white-collar' exemptions that would allow an employer to exempt the employee from overtime," Sanders says.
- Don't leave best practices to chance. Avoid missing key actions by having a process in place for correctly classifying your employees.

Classifying employees correctly and adhering to the FLSA and applicable state and local laws and regulations can feel overwhelming and frustrating. But employee misclassification can be a common mistake that many business owners make. Putting the right process in place may help you avoid time-consuming and costly penalties.