

The Basics of Exempt Status

The federal Fair Labor Standards Act (FLSA) provides that certain employees are exempt from the Act's minimum wage and overtime requirements. This is the origin of the term "exempt employee." The FLSA contains specific criteria for determining whether an employee is exempt. If those criteria are not met, the employee is nonexempt. In addition to meeting those criteria, exempt employees must be paid on a "salaried basis," which means being paid the same amount each week regardless of the number of hours worked in the week.

The employee must be paid a guaranteed minimum amount that is not subject to being reduced based on the quality or quantity of work performed. There are some limited situations where an exempt employee's pay can be reduced. Numerous cities and states have local laws for minimum wage and overtime exemption. For example, Illinois, Minnesota, and Wisconsin have state laws defining exempt employees, and employers in those states must generally follow the law or provisions of the law that are most favorable to the employee.

With exempt employees, greater emphasis is placed on meeting the responsibilities assigned to the position than on working a specified number of hours. Some employers treat exempt employees like nonexempt employees in terms of their working conditions, such as office hours, lack of flexibility, and supervisory oversight. Although not a violation of the FLSA, these practices are inconsistent with the expectation of an exempt position.

The term "exempt" is not synonymous with "salaried," and similarly, the term "nonexempt" is not synonymous with "hourly."

Here is a quick way of making the distinction:

HOW an employee is paid = Hourly or salary basis
STATUS of an employee's position = Nonexempt or exempt

HOW an employee is paid:

Hourly: An employee is paid an hourly amount and is only paid for hours worked. Hours can vary weekly, and hourly employees must document their work time using a timekeeping system. Nonexempt classified employees can be paid on an hourly basis but exempt classified employees cannot be paid on an hourly basis, except where allowed by law. See Salary Level below for certain exceptions.

Salary: Generally, an employee is paid on a salary basis if there is a guaranteed minimum amount of money they will receive for any workweek in which any work is performed. Both exempt and nonexempt employees can be paid on a salary basis.

STATUS of an employee's position:

Nonexempt: Nonexempt classified employees are entitled to rights under the FLSA, including overtime pay.

Exempt: With few exceptions, to be exempt classified, an employee must (1) be paid a salary at equal to or greater than the minimum amount required by local, state, and/or federal laws, and (2) be paid on a salary basis, and also (3) perform exempt-level job duties. Most employees must meet all three tests to be exempt.

Salary level: This means exempt employees cannot be paid a salary less than the minimum amount required by local, state, and/or federal laws per week. The salary requirements do not apply to outside sales employees, teachers, and employees practicing law or medicine. Exempt computer employees may be paid at least the minimum salary per week on a salary basis or an hourly basis at a rate not less than an hourly rate that satisfies local, state, and/or federal requirements.

MRA—The Management Association, Inc. does not make any representations or warranties regarding the use of this document. The material and content provided in this document is being provided for informational purposes only. The material provided does not constitute legal advice and should not be substituted for the advice of legal counsel. While the content may refer to federal, state, and/or local laws in place at the time of publication, members should consult with their own legal counsel prior to relying on any content herein.

This document is for use by MRA—The Management Association, Inc. members and may not be reproduced or distributed to non-members without prior written permission.

Salary Basis: With some exceptions, the base pay of an exempt employee may not be reduced based on the quality or quantity of work performed, and an exempt employee's base pay may not be reduced for partial-day or full-day absences. The regulations for the Fair Labor Standards Act (FLSA) do, however, state that “deductions may be made for absences of a day or more occasioned by sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability.”

Employers need to be careful when deducting pay from an exempt classified employee. Impermissible reductions may put the exemption status at risk, as an exempt employee who is subject to impermissible reductions in salary is no longer paid on a salary basis and is, therefore, nonexempt, requiring overtime pay.

Exempt Duties: Exempt status is limited to employees who perform relatively high-level work. Job titles or position descriptions are of limited usefulness in this determination. The actual job tasks must be evaluated, along with how the particular job tasks fit into the employer's overall operations.

The law does not require the exempt classification to be used. All positions could be classified as nonexempt, thus making all employees subject to the minimum wage and eligible for overtime pay. However, an employer should be aware of the financial impact of this decision in their workplace.

Conversely, use caution when classifying positions as exempt. An organization found to be in violation of FLSA rules can be penalized significantly. A thorough job analysis should be completed when determining exemption classification. If in doubt, minimize risk by classifying it as nonexempt.

MRA—The Management Association, Inc. does not make any representations or warranties regarding the use of this document. The material and content provided in this document is being provided for informational purposes only. The material provided does not constitute legal advice and should not be substituted for the advice of legal counsel. While the content may refer to federal, state, and/or local laws in place at the time of publication, members should consult with their own legal counsel prior to relying on any content herein.

This document is for use by MRA—The Management Association, Inc. members and may not be reproduced or distributed to non-members without prior written permission.