FLSA Checklist for Exemption Rule Compliance

The federal Fair Labor Standards Act (FLSA) governs which executive, administrative, professional, computer, and outside sales employees are exempt from minimum wage and overtime pay protections. Use this checklist to minimize the risk of noncompliance or a wage and hour claim due to improper exemption status classifications under the FLSA. MRA’s [FLSA Exemption Rules Toolkit](https://www.mranet.org/resource/flsa-exemption-rules-toolkit) offers accompanying resources.

* **Do any additional local or state laws apply?**
	+ Ensure local and state laws are considered and followed.
* **Are current “exempt-level” positions accurately classified?**
	+ Ensure job descriptions and position analysis questionnaires are up-to-date and accurately reflect the duties performed by employees.
	+ Confirm the percentage of time spent on tasks deemed “exempt” is identified. This process can be completed by interviewing job incumbents and their supervisors and direct observation of work performed
	+ Make note of positions in your organization at risk of losing exempt status due to the minimum salary requirements or duties tests.
* **Have we analyzed all our options and developed a strategy?**
	+ When analyzing positions at risk of losing exempt status, there are several different options to consider. Each option has an impact on both cost and employee morale and could include the following:
	+ Increase salaries to meet the new minimum salary requirements.
	+ Add duties or responsibilities to ensure the duties tests are met.
	+ Transition exempt employees to nonexempt status.
	+ Consider adding staff to minimize overtime expenses.
	+ Evaluate benefit offerings, incentive pay programs, work schedules, etc., to offset potential increased labor costs.
	+ Employers have many options and strategies; the solutions listed above are just a few common approaches. Each has pros and cons, so employers should develop strategies based on what aligns best with their company culture and total rewards philosophies.
* **Have we decided how to communicate with managers and employees impacted by this change?**
	+ Exempt employees transitioning to nonexempt status may perceive this change negatively, lowering employee morale. It is important to consider the messaging around this transition to minimize ill feelings and other negative responses.
	+ Carefully message the communication to promote and highlight the positives of this change. Reassure the employees that they remain valued members of the organization. Communicate with managers regarding their role in this process and how this change impacts their budget, staffing, and scheduling.
* **Are managers and employees properly trained in timekeeping?**
* Managers must understand the workplace rights of their nonexempt employees. This includes how employees will be paid for taking calls or responding to emails from their smartphones or other devices, travel time, time spent in meetings and training, etc.
* Employees classified as nonexempt will need to know how to record their time worked based on their company timekeeping method. They will also be expected to understand overtime policies and procedures.
* **Do we audit ourselves on an annual basis?**
* Job duties continually change as business needs change or employee skillsets are identified. Keep in mind that job titles alone do not determine exempt-level status. As new duties are added or reassigned, a position can quickly change from exempt-level to nonexempt status. Audit positions regularly to minimize the risk of misclassification.
* The financial consequences of misclassifying employees can be severe and typically include backpay, various penalties, and attorney fees.