



# Federal FLSA White Collar Exemption Guide

## Introduction

The Fair Labor Standards Act (FLSA) establishes requirements for minimum wage and overtime pay. It also imposes various restrictions on record keeping and the employment of minors. The FLSA affects most public and private employers and is enforced by the Wage and Hour Division of the Department of Labor (DOL).

**What does it mean to be exempt?** An exempt employee is one who is not subject to the minimum wage and/or overtime provisions of the FLSA. This means that the employer does not have to pay the employee a premium for hours worked over 40 in a week. However, it also means that the employee's wages may not be reduced when fewer hours than normal are worked, except in limited circumstances. There are a variety of positions that are exempt from the minimum wage and overtime provisions of the FLSA; this guide deals only with what are called the White Collar Exemptions.

When determining if an employee is exempt, there are several factors to consider. It is not enough to look at a job title or job description to decide whether an employee is exempt—you must look at the actual duties performed by the employee, plus how the employee is paid and how much the employee is paid.

## Interaction With State Laws

State laws can also impact how an employee may be classified. Employers should proceed with care as there are some differences between the applicable state laws and the FLSA. Some exempt roles may not exist under state law or it might be much more difficult to properly classify an employee as exempt.

Some states also have a higher minimum salary than required by the FLSA. California, for instance, requires that employees make at least twice the state minimum wage to

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qualify as exempt. See the State Laws section of the HR Support Center or check with an HR Professional or employment attorney to see if your state has any unique regulations.

## Definitions

**Primary Duty:** Primary duty means the main or most important duty that the employee performs. Determination of an employee's primary duty must be based on the character of the employee's job as a whole. Factors to consider include the relative importance of the exempt duties as compared with other types of duties, the amount of time spent performing exempt work, the employee's relative freedom from direct supervision, and the difference between the employee's salary and the wages paid to other employees for the kind of non-exempt work also performed by the employee (e.g., if a shift supervisor only makes 50 cents more per hour than the workers they supervise, their supervisory duties are probably not "primary" enough to qualify them for an exemption).

**Salary Basis:** Being paid on a salary basis means an employee regularly receives a predetermined amount of compensation each pay period. The predetermined amount cannot be reduced because of the quality or quantity of the employee's work. So whether the employee works 48 hours or 32, or whether they accomplish 10 things or three things, they should be paid the same amount.

## Resources from the Department of Labor Wage and Hour Division

### Fair Labor Standards Act Advisor

[Click here](#) for an interactive guide providing information to help employers understand Federal minimum wage, overtime, child labor and recordkeeping requirements.

### Exemption Fact Sheets

These links will take you to fact sheets explaining each of the six White Collar Exemptions. Click on the icons to check them out.



Executive



Computer Employee



Administrative



Outside Sales



Professional



Highly Compensated

# Is my employee exempt from the FLSA?

To say “yes,” you must answer yes to **all** questions in the box.

