

# Banker's Bulletin

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## Exempt vs. Non-Exempt Employees: What Are the Differences?

### What Does It Mean to Be a Non-Exempt Employee?

Your business owners should understand what the U.S. Department of Labor (DOL) regulations that apply to the Fair Labor Standards Act (FLSA) require when an employee is non-exempt. The FLSA requires employers to pay all non-exempt employees at least the federal minimum wage for hours worked, plus overtime pay at one and one-half times the regular rate of pay for hours worked over 40 hours during a workweek.

Examples of positions held by non-exempt employees:

- Electricians, carpenters, and construction or maintenance workers in non-management positions
- Sales employees
- Clerical or secretarial employees with little autonomous decision-making, such as receptionists, accounting clerks, bookkeepers, and personnel clerks
- Licensed practical nurses (LPNs)

### What Does It Mean to Be an Exempt Employee?

The FLSA provides an exemption from both minimum wage and overtime pay for employees who meet three tests: a salary level test, a salary basis test, and a job duties test. To be exempt from FLSA provisions, an employee must earn a minimum base salary as provided in the regulations, and must also be paid on a salary basis, the same amount each week, regardless of quantity or quality of work.

Examples of positions held by exempt employees:

- Business executives
- Accountants, compliance, and marketing professionals
- Managers that supervise two or more full-time employees or the part-time equivalent
- Executive assistants given authority to make significant decisions on behalf of business owners or senior executives
- Doctors, lawyers, and teachers

### Consequences of Exempt vs. Non-Exempt Misclassification

Incorrectly classifying an employee can result in fines and penalties, which may include payment for back wages. Classifying employees correctly and adhering to the applicable federal, state, and local laws and regulations can feel overwhelming and frustrating. However, 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.

Determining an employee's exempt or non-exempt status may not always be cut-and-dry. Additionally, there may be state or local regulations to follow when it comes to overtime or minimum wage requirements. Failure to pay overtime to incorrectly classified workers can leave your business owners open to litigation and/or penalties.

**Paychex HR Services can offer support and guidance on the complex area of employment classification. Contact your Paychex representative to learn more today.**