

Fair Labor Standards Act Exempt vs. Non-Exempt Test

Based on Current FLSA (Jan 1 2020)

Paid Hourly

Paid A Salary Of:

Less Than \$684*
per Week

More Than
\$684* per Week

Non-Exempt

Exempt: If the employee makes more than \$684 per week, the employee **MUST** fall into one of the following exemption categories to be considered an Exempt employee:

Executive Exemption:

The Employee Must:

- Manage the business or a specific subdivision within the company, **AND**
- Manage and direct at least two other full time employees, **AND**
- Have the authority to hire, fire, advance and promote employees.

Common Traits:

- Interviews, selects and trains employees.
- Schedules and adjusts pay for employees.
- Evaluates employees.

Exempt – Business Owners who own 20% of their business fall within this exemption.

Administrative Exemption:

The Employee Must:

- Work in an office (not manual labor), **AND**
- Primary job duties require the employee to exercise discretion and independent judgment for important matters.

Common Traits:

The Employee Can:

- Negotiate contracts for the company.
- Bind the company by signing agreements.
- Waive or deviate from company policy without approval.
- Make decisions on behalf of the company.

Note: Secretary and Administrative Assistants typically aren't within this exemption.

Professional Exemption

- The Employee's primary job duty is to perform work requiring advanced knowledge (typically intellectual work)
- The Employee must have:
 - Advanced knowledge (i.e. Advanced Degree)
 - Advanced knowledge in field of science or learning.
 - Acquired advanced knowledge through prolonged course work.

Common Exempt Examples:

Doctors, Lawyers, CPAs, Architects, Engineers, Chemists, Physicians' Assistant, Dental Hygienist (with degree), Registered Nurse.

Common Non-Exempt Examples:

Licensed Nurses, Paralegals, & Bookkeepers.

Learned Knowledge – Certain employees in specific industries can earn this exemption based on their learned knowledge of their specific industry (i.e. a funeral director).

Creative Professional Exemption - The employee's primary duty includes work involving inventions, imagination, originality, or talent in art or creative project. (Examples: Musician, Artist, Actor, Comedian, & Athlete)

Computer Employees:

The Employee's primary duty must consist of:

- The application of systems analysis techniques and procedures (includes working with end users to determine hardware, software, or system functionality);
- Designing, developing, documenting, analyzing, creating, testing, or modifying systems, programs and/or software;
- Designing, documenting, testing, creating, modifying computer operating systems; **OR**
- A combo of some or all of the above.

Hourly Exceptions – Computer Employees who make more than \$27.63 per hour (are exempt even though they are paid hourly)

Non-Exempt: Computer repair and manufacturers of computer equipment.

Additional Exemptions

An Employee is also Exempt If They Meet Either of These Exemptions

Outside Sales Exemption: (No Minimum Salary Requirements)

The Employee's must work:

- In Marketing / Sales, **AND**
- Typically outside of the employer's office or place of business to conduct sales.

Example: Sales staff who travel to client to make the sale.

Non-Exempt: Inside sales reps. (sales staff that doesn't travel to client or customer to make the sale).

Highly Compensated Exemption:

The Employee must:

- Make over \$107,432* annually **AND**
- Meet some of the traits in the other exemption categories (but not all).

Not Exempt: Blue Collar Worker

- None of the exemptions stated herein apply for "Blue Collar Workers"
- Blue Collar Workers are those who do manual labor (i.e. perform, operate with hands, physical skill and labor).
- Examples: Carpenter, electrician, mechanic, plumber, police officer, firefighter, and first responder.

Dollar Figures: All dollar figures will be updated every 3 years (proposal to take effect January 01, 2024)

Note: Of the \$684 Weekly Salary -Nondiscretionary bonuses and incentive payments (paid quarterly) may satisfy up to 10 percent of the salary level (\$615 must be a guaranteed) weekly

Disclaimer – This chart is for informational purposes and not for legal advice. If you have any questions regarding whether an employee is Exempt or Non-Exempt contact HR by Karen at 239-776-5919.



Instructions:

Use this chart to determine whether your employee is considered "Exempt" or "Non-Exempt" under the Fair Labor Standards Act.

"Exempt" Employees are not paid overtime.

"Non-Exempt" Employees must be paid overtime (time and a half) for all hours worked over 40 per week (even if the Employee is paid a salary).