



Charting the course for business success

STRATEGIC WORKPLACE SOLUTIONS, LLC

What is the difference between exempt and non-exempt and when am I required to pay overtime?¹

The Fair Labor Standards Act (FLSA), as amended, establishes the following for covered workers: minimum wage, overtime, child labor, and related recordkeeping and reporting. In addition, state law also addresses wage and hour issues, so you have to become familiar, and comply, with both sets of requirements. The FLSA requires that all employees must be paid overtime (at least 1½ times the straight time pay rate) for all hours worked over 40 in a workweek unless they meet specific requirements for exemption. (In addition, some employers are not subject to the FLSA.)

Employees who are subject to the overtime requirements are "non-exempt." Employees who are not subject to the overtime requirements are "exempt." The most common exemption classifications are: executive, administrative, learned professional, creative professional, computer professional, and outside sales.

NOTE: Just paying an employee on a salary basis does not make him/her exempt from overtime pay requirements. There are other, very important criteria that must be evaluated.

Correctly classifying your employees is very important because lack of compliance in this area creates significant liability for your business. If you misclassify a non-exempt employee as exempt, you could be subject to penalties, interest, back pay, and payroll taxes for this employee and open your business up for the examination of other positions. If you have correctly classified your exempt positions, it is important to be sure that you do not take any actions toward these employees that would erode their exemption. If you do this, you essentially make them a non-exempt employee.

For more details regarding these guidelines, to request an FLSA Classification Evaluation of current positions, or to request a review of related practices, feel free to contact carol@strategic-workplace-solutions.com.

¹ This summary is for general information purposes and is not intended to substitute for professional advice.