

# If I Pay My Employees Salary, Then I Don't Have to Pay Them Overtime. Wrong!

Many business owners have uttered those fateful words, and most of the time they were wrong.

Some paid a hefty price for that failure. So the question is, when do I have to pay overtime?

This article will answer that question as it applies to Federal law, specifically the Federal Fair Labor Standards Act (FLSA). **State and local laws vary, so consult a payroll professional in your area.**

It is easier to start out with the assumption that everyone is owed overtime (1.5 times the regular rate) if they work over 40 hours in a workweek. Then we can define the exemptions to that rule, often called Exempt Employees. Here are the general categories of Exempt Employees:

**Professionals:** Generally learned professionals are not due overtime (e.g. CPA's). The employee must perform work requiring advanced knowledge in science or learning. The work must require consistent exercise of discretion and judgment,

and the advanced knowledge must be normally acquired over a prolonged course of instruction. This means lawyers and doctors, not craftsmen such as carpenters and plumbers.

**Outside Sales:** The employee's primary duty must be soliciting orders or contracts, and the employee must be normally away from the place of business. Be careful to ensure that the activity is really sales according to the FLSA definition.

**Executive:** Generally, the employee must be paid at least \$24,000 per year salary, manage two or more other full-time employees, and have the authority to hire and fire. Employers have run into some problems with the hiring and firing issue. Although there are some cases where employees who can't hire and fire were treated as exempt, it is best not to rely on that nuance.

**Administrative:** Again, the employee must be paid at least \$24,000 salary annually. The employee's primary job responsibilities must be

office (non-manual) and be directly related to the management of the employer or customers. Lastly, the work must require the exercise of significant matters of discretion and judgment. Receptionist? Probably not. HR professional, maybe.

**Computer Employee:** Similar to the professional exemption, employee must work as a skilled worker in the computer field at the system level in design, testing, documentation, or programming. Additionally, they must be paid at least \$28 per hour. This is not your frontline tech support guy or gal.

**Highly Compensated:** Office and non-manual work performed by employees making \$100,000 or more qualifies as exempt. They must meet at least one test of the other exempt categories (e.g. Administrative), but don't have to meet ALL of the requirements.

**So can an employee be both exempt and non-exempt?** Absolutely! It depends on what work they're performing.

**What happens if I screw up?** You have to pay the overtime of course, but the US Department of Labor can tack on criminal charges and fines up to \$10k! State penalties are on top of that.

**How Do I Protect Myself?** We recommend that you require time tracking of ALL employees, exempt or not. There are reasons other than FLSA that you might want to keep track of time, but at a minimum, you have a limit on possible misclassifications. If the DOL determines that your "exempt" employee really isn't and orders that employee be paid their back wages, how will you prove how much they worked? If the employee says I worked 60 hours a week since I started, the burden of proof is on you to show otherwise. For the inexpensive options in timekeeping available, it is simply not worth the risk.

#### About Us

Core Payroll offers payroll and HR services to business of all types and sizes, throughout Oklahoma and the United States. We have many inexpensive solutions to track labor compliance, including overtime. If you would like additional information about this topic or have other related questions, email us at [information@corepayroll.com](mailto:information@corepayroll.com). We will do everything we can to help you!