

# How to protect yourself from Wage Claims

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.

## How To Calculate Overtime

State and local laws vary, so consult a payroll professional in your area.

Overtime is easy to calculate, right. It's 1.5 times the regular pay rate. True, but that is the only easy part. Here is a list of the other components and factors

**Work Week:** 7 consecutive days or 168 consecutive hours that is consistent. A business can't keep changing it to avoid overtime. Anything over 40 hours in a work week is paid at overtime. Federal law says nothing about hours in a day, so it's not

limited to 8 hours, just the week.

**Rate:** Total Gross Pay divided by the pay period. This doesn't include paid time off, but does include bonuses. Paid commuting from home is excluded

**Make Up Time:** If an employee works 45 hours one week to make up for time that he is taking off the following week, the employer still must pay overtime. Each workweek stands alone.

**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. Inexpensive options in timekeeping are available. It's not worth the risk.

### About Us

Core Employee Solutions offers a turn key solution for all of your employee administrative needs. 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 [info@myemployeesolution.com](mailto:info@myemployeesolution.com) We will do everything we can to help you!