

What is the Fair Labor Standards Act, or **FLSA**?

Enacted in 1938, the FLSA establishes federal standards for minimum wage, overtime pay, record-keeping, and youth labor. Correctly classifying employees as exempt or non-exempt is essential - and non-negotiable - for business. As the workplace and job duties evolve, regular re-evaluation of exemptions is more critical than ever.



Exempt vs. Non-Exempt Employees

Non-Exempt

Entitled to receive at least the federal minimum wage for all hours worked and overtime pay at one-and-a-half times their regular rate for hours worked over 40 in a work week.

Exempt

Not entitled to overtime pay. To be classified as exempt, employees must meet specific criteria related to their salary and job duties as defined by the FLSA.

The 3 Core Test for Exemption Status

1. Salary Basis Test



The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of the work performed. *(There are only a few professions that do not require a salary basis or salary level test, such as outside sales, first responders, and the like.)*

2. Salary Level Test

Currently, the employee must earn a salary of at least **\$684 per week**.

3. Job Duties Test



The employee's primary duties must meet the specific criteria for one of the FLSA's exemption categories listed below (e.g., executive, administrative, professional).

A highly compensated employee may also be exempt if they do office or non-manual work, earn at least \$107,432 annually, and perform at least one of the duties of an exempt executive administrative or professional employee.

Common Types of Exemptions



Executive

- ✓ Manages the enterprise or a department/subdivision.
- ✓ Regularly directs the work of two or more full-time employees.
- ✓ Has authority to hire or fire or make significant recommendations on employee status.



Administrative

- ✓ Performs office or non-manual work directly related to management or general business operations.
- ✓ Exercises discretion and independent judgment on matters of significance.



Professional

- ✓ Primary duty is work requiring advanced knowledge in a field of science or learning.
- ✓ Knowledge is customarily acquired by a prolonged course of specialized intellectual instruction.



Creative Professional

- ✓ Primary duty is the performance of work requiring invention, imagination, originality, or talent.
- ✓ Applies to recognized fields of artistic or creative endeavor (e.g., music, writing, acting).



Computer Employee

- ✓ Primary duties involve application of systems analysis, design, development, or testing of computer systems or programs.



Outside Sales

- ✓ Primary duty is making sales or obtaining orders or contracts.
- ✓ Customarily and regularly engaged away from the employer's place of business.
- ✓ Note: This exemption does not have a minimum pay requirement.

Important Note on State & Local Laws



Many states and cities have their own minimum wage and overtime laws. Some of these laws provide greater worker protections or have a higher minimum salary threshold than the FLSA. When an employee is covered by both federal and state laws, the law that provides the more generous benefit to the employee applies.

Consequences of Misclassification



Fines & Penalties

Up to \$1,000 per violation *(states may have higher fines)*



Back Pay

Required to pay for all misclassified hours



Damaged Reputation

Harm to employee relations & company image



Increased Risk

Higher chance of lawsuits and audits



Good News!

With Stratus HR, our certified HR experts know the ins and outs of the FLSA. We provide guidance on all rules and regulations to help keep you compliant. Our team will work with you to complete a comprehensive assessment.