

IS MY EMPLOYEE EXEMPT FROM OVERTIME?

INTRODUCTION

The **Fair Labor Standards Act**, or the **FLSA**, establishes requirements for minimum wage and overtime pay. It also imposes various restrictions on record keeping and the employment of minors. The FLSA affects most public and private employers and is enforced by the Wage and Hour Division of the Department of Labor (DOL).

What does it mean to be exempt? An exempt employee is one that is not covered under the FLSA and the employer is not required to comply with the minimum wage and overtime requirements of the FLSA. Practically speaking, this means that the employer does not have to pay the employee overtime. It also, however, means that the employee's wages may not be reduced when fewer hours than normal are worked except in limited circumstances. There are many other exempt categories that are covered by parts of the FLSA such as farm workers or airline employees.

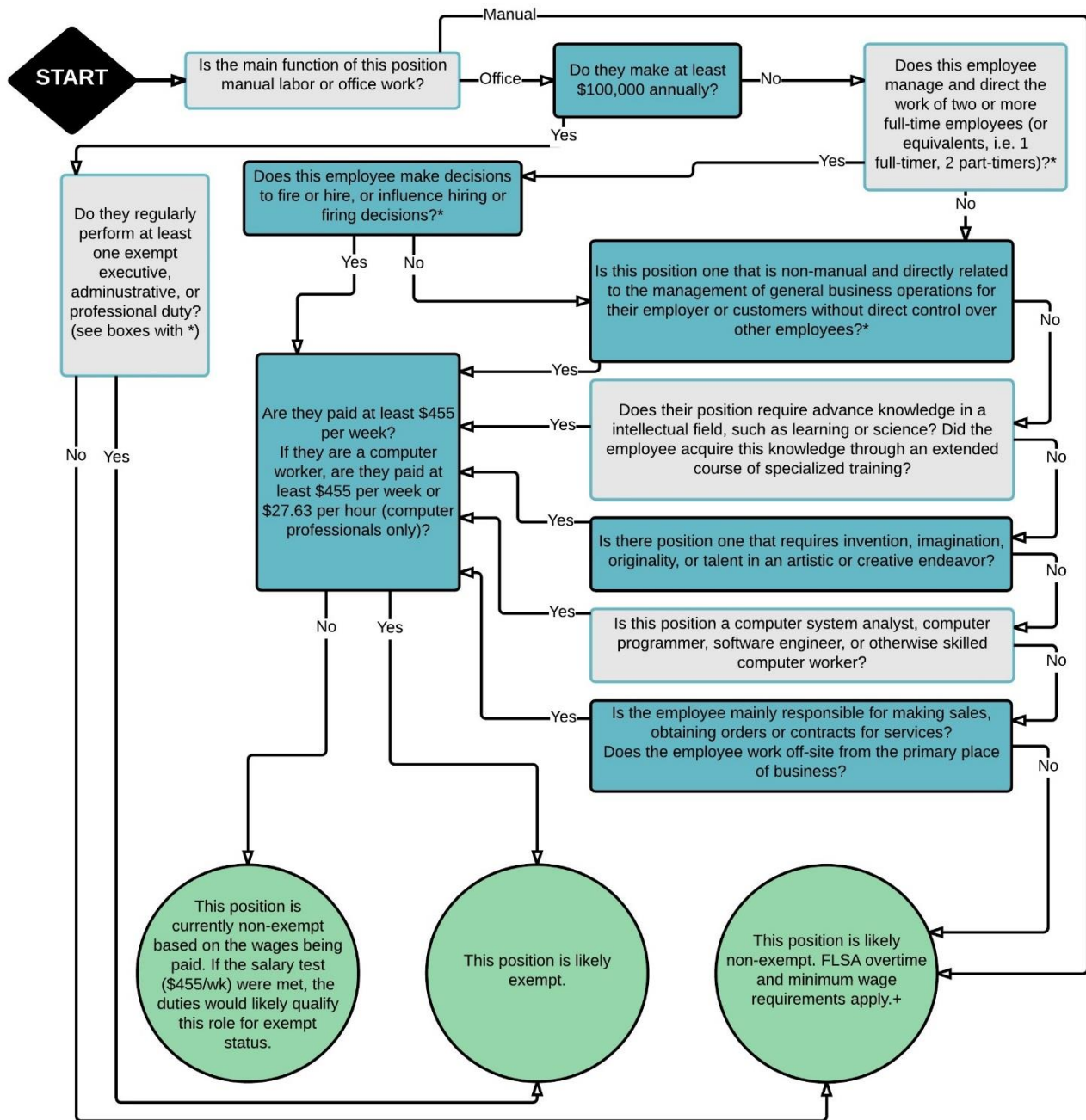
When determining if an employee is exempt, there are several factors to consider. It is not enough to look at a job title to find if an employee is exempt – you must look at the job description, the actual duties and tasks that make up the majority of an employee's job, and the method of wage payment.

Some of the key factors for determining if an employee is exempt are: how much authority they have over other employees, the nature of the job duties, and how much they are paid. State laws can also impact how an employee should be classified. For instance, employers in many states such as California, New York, Oregon, or Washington should proceed with care as there are some slight differences in the state and Federal laws. Some of the criteria from an exempt role may not exist under state law or might be much more difficult to meet. California, specifically, has many exemptions that are more stringent than the federal requirements outlined here. Check with an HR Professional to see if your state has any specific regulations.

DEFINITIONS

- **Manual work** is defined by work that is done physically by people, usually requiring continual use of a worker's muscles and hands.
- **Office Work** is work conducted in an office environment. Most work is being done seated with minimal lifting or moving of heavy objects.
- A **salary** is payment on a fixed rate to an exempt employee and is not based on how many hours worked. Currently the Federal minimum salary is \$455 per week or \$27.63 per hour for applicable computer workers. If a state law mandates minimum salary, and it is higher than the Federal minimum, the higher rate must be paid.
- **Hourly Wage** is what employers are required to pay non-exempt employees, and when applicable, except for exempt computer workers. Employers must pay at least the Federal minimum wage of \$7.25 per hour or \$10.10 if covered by the Service Contract Act. If a state law mandates minimum wage, and it is higher than the Federal minimum, the higher rate must be paid.
- **Overtime** is payment to workers for hours of work done beyond 40 hours per workweek and must be paid at a rate of at least 1.5 times the worker's regular rate of pay. Overtime premiums include some other payments such as non-discretionary bonuses and some incentives. Generally, exempt employees do not qualify for overtime pay and there are extremely limited circumstances where non-exempt employees do not need to be paid overtime. State laws may change the nature of overtime requirements.

- A **workweek** is any period of seven days that the employer consistently uses to measure a workweek, such as Monday through Sunday.



+Some non-exempt positions are exempt from overtime, but not minimum wage, and some non-exempt positions are exempt from minimum wage, but not overtime. Please check with an HR Professional to ensure compliance.

EXTENDED READING

- Department of Labor’s Wage and Hour Division <http://www.dol.gov/whd/>
- Department of Labor’s Guide on the FLSA <http://www.dol.gov/elaws/flsa.htm>
- Common Exemptions <http://www.dol.gov/elaws/esa/flsa/screen75.asp>

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