

FEDERAL FLSA EXEMPTION GUIDE

Is my employee exempt from overtime?

INTRODUCTION

The **Fair Labor Standards Act (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 who is not subject to the minimum wage and/or overtime provisions of the FLSA. This means that the employer does not have to pay the employee a premium for hours worked over 40 in a week. However, it also means that the employee's wages may not be reduced when fewer hours than normal are worked, except in limited circumstances. There are a variety of positions that are exempt from the minimum wage and overtime provisions of the FLSA; this guide deals only with what are called the *White Collar Exemptions*.

When determining if an employee is exempt, there are several factors to consider. It is not enough to look at a job title to ascertain whether an employee is exempt – you must look at the actual duties and tasks that make up the majority of an employee's job, plus how the employee is paid and how much the employee is paid.

State laws can also impact how an employee may be classified. For instance, employers in many states – such as California, New York, Oregon, and Washington – should proceed with care as there are some differences between the applicable states laws and the FLSA. Some exempt roles may not exist under state law or might be much more difficult to meet. California in particular has many exemption criteria that are more stringent than the federal requirements outlined here. Check with an HR Professional or employment attorney to see if your state has any unique regulations.

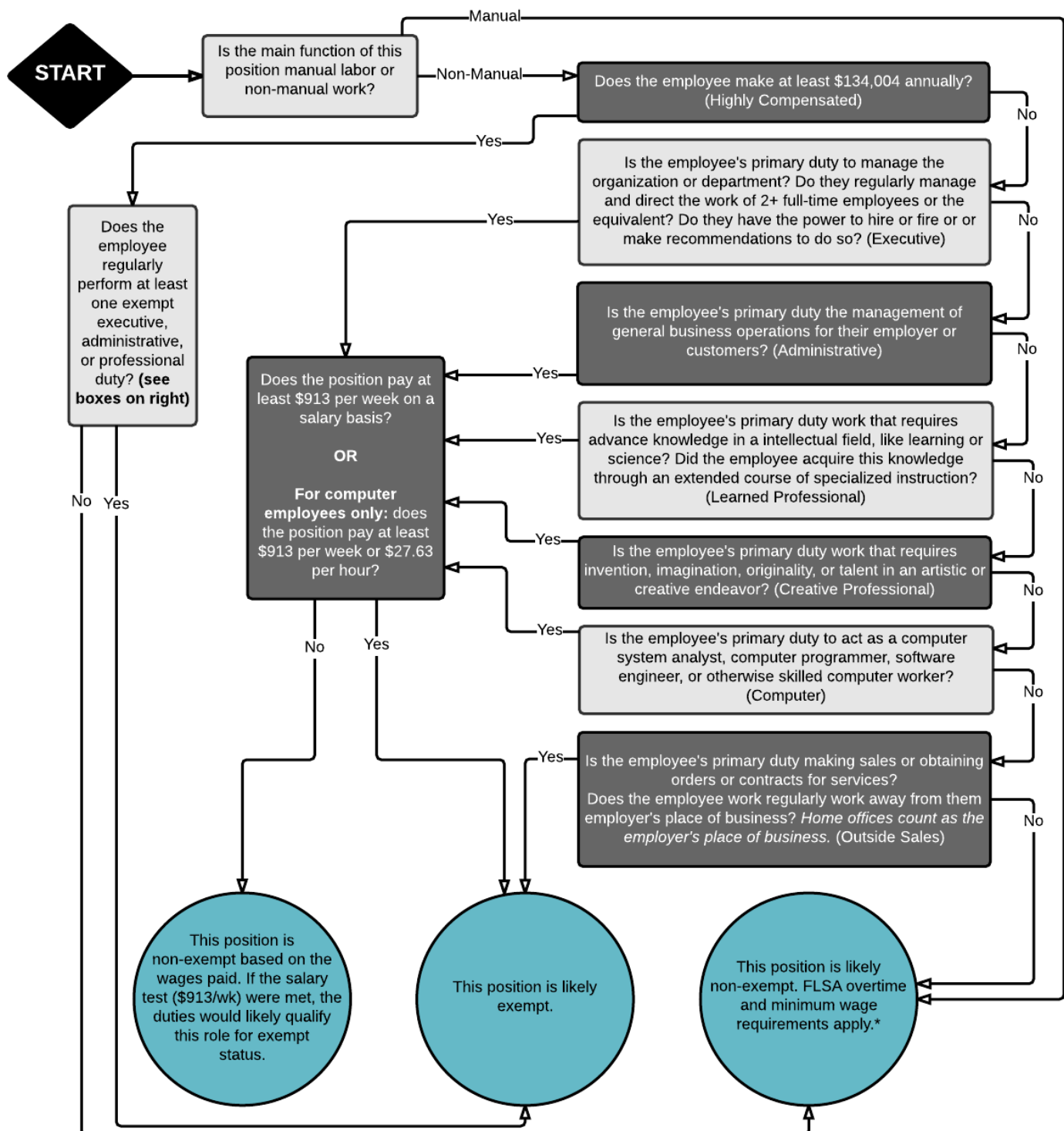
DEFINITIONS

- **Manual Labor or “Blue Collar” Work:** These classifications of work are defined by repetitive operations with the hands, physical skill, and energy of the worker. Skills and knowledge are gained through apprenticeships and on-the-job training.
- **Overtime Pay:** Overtime pay is a premium payment. Under the FLSA, non-exempt employees must be paid time and a half (1.5x) their regular rate of pay for each hour worked over 40 in a workweek. If an employee works at multiple pay rates throughout the week, or if they earn commissions or other incentive pay, their regular rate of pay may vary and require additional calculations. Some states have their own overtime laws, which expand on the FLSA (e.g., daily overtime in California).
- **Primary Duty:** Primary duty means the principal, main, major or most important duty that the employee performs. Determination of an employee’s primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee’s job as a whole. Factors to consider include the relative importance of the exempt duties as compared with other types of duties, the amount of time spent performing exempt work, the employee’s relative freedom from direct supervision, and the relationship between the employee’s salary and the wages paid to other employees for the kind of non-exempt work performed by the employee (e.g., if a shift supervisor only makes 50 cents more per hour than the workers they supervise, their supervisory duties are probably not “primary” enough to qualify them for an exemption).
- **Salary Basis:** Being paid on a salary basis means an employee regularly receives a predetermined amount of compensation each pay period. The predetermined amount cannot be reduced because of the quality or quantity of the employee’s work. Additionally, with a few exceptions, an exempt employee must receive their full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. So whether the employee works 40 hours, or 32, or whether they accomplish 10 things or three things, they will be paid the same amount.
- **Workweek:** The seven-day, 168-hour period that the employer consistently uses to track the number of hours worked to determine if any overtime is due. A commonly used workweek is Sunday at 12:00 am through the following Saturday at midnight.

OTHER RESOURCES

- **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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→ The rates below are effective December 1st, 2016. Prior to the FLSA update in May 2016, the weekly salary level for executive, administrative, and professional employees was \$455 per week or \$23,660 annually. For Highly Compensated Employees, the rate was \$100,000 annually.



**Note: 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.*