New Exempt/Non-exempt Classification Rules and Their Impact on Payroll

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According to FLSA

Three Requirements to Meet Exemption:

1. Salary Basis
2. Job Duties
3. Salary Level

Salary Basis Requirement

- They regularly receive a predetermined compensation amount each pay period—a guaranteed amount.

- They must receive their full salary for any work week in which they perform any work without regard to the number of days or hours worked.

Job Duties Requirement

Evaluate the job *duties*—and not the job *title*—when making a determination that a position is exempt from overtime pay.

Executive Duties

- Their primary duty is management of the enterprise/company.

- They have authority to hire or fire other employees and make other management decisions such as how the work is done, advancement, promotion, change of status; **AND…**

Executive Duties (continued)

- They manage and direct the work of two or more other employees.
- Two full-time employees may also be the equivalent, i.e. two full-time employees or four part-time employees who work a total of at least 80 hours per week.
- Large departments may have several managers, but the hours worked by an employee cannot be credited more than once.
- An employee who merely assists in the manager's absence does not qualify.

Administrative Duties

- An employee whose primary duty is the performance of the management or general business operations;

AND

- Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance, which refers to the level of importance or consequence of the work performed.

Administrative Duties (continued)

- The work must be directly related to assisting with running the business.
- The employee's authority includes the authority to negotiate and bind the company on significant matters, such as binding the company into contracts and making executive level decisions on behalf of the company.

Learned Professional Duties

- The employee's <u>primary duty</u> must be the performance of work requiring <u>advanced knowledge.</u>
- <u>The duties require a four-year degree ***and*** the employee must be working in the same field as the degree earned.</u>

Outside Sales Duties

- The employee’s primary duty is making sales or obtaining orders or contracts for services,

AND

- The employee is customarily and regularly engaged away from the employer’s place of business in performing such primary duty—at least 80% of their time.

Outside Sales Duties (continued)

- The employee does not work in a specific location, place of business or fixed site, such as the home.
- The work does not include sales by mail, phone or internet.
- The work does not include inside sales.

Computer Occupation Duties

- Employees are considered exempt if they are paid a salary or an hourly rate in excess of $27.63/hour,

AND

- Computer systems analysts, computer programmers, software engineers or other similarly skilled computer workers, are exempt if the employee’s primary duty consists of:
  - Application of systems analysis techniques.
  - Design, development, creation, testing, or modification of computer systems or programs.

Minimum Salary Level Requirement

- For most employees, the minimum salary level required for exemption currently is **<u>$23,660</u>** annually.

- Effective December 1, 2016, this minimum salary level is **<u>increasing to $47,476 annually</u>**.

Bonus Parameters

- At least 90 % of this amount must be paid as base salary.
- 10% could be bonus, but cannot be a discretionary bonus.

  - If a bonus falls short—you can do a 1x true up—the month after quarter end.
  - Otherwise, they are non-exempt, and all hours worked over 40 in each week must be paid at the overtime rate.

$47,476 Cannot Be Pro-rated

- The salary must be at this new level in order for an individual to maintain exemption even though they met the other two exempt criteria.

For example

Your employee is:

- Currently exempt.
- A Four-year degreed accountant with five years of experience.
- Working 32 hours per week, making $40,000.
- Paid as a salary.

→ What happens on December 1, 2016?

Changing Exempt To Non-Exempt
AND
Paying Non-Exempt Employees A Salary

Timekeeping

- Employers must have timekeeping records.
- Employers may use any method they choose for employees to track and record hours as long as they are complete and accurate.

Overtime

- **Non-Exempt Employees Must be Paid Overtime.**

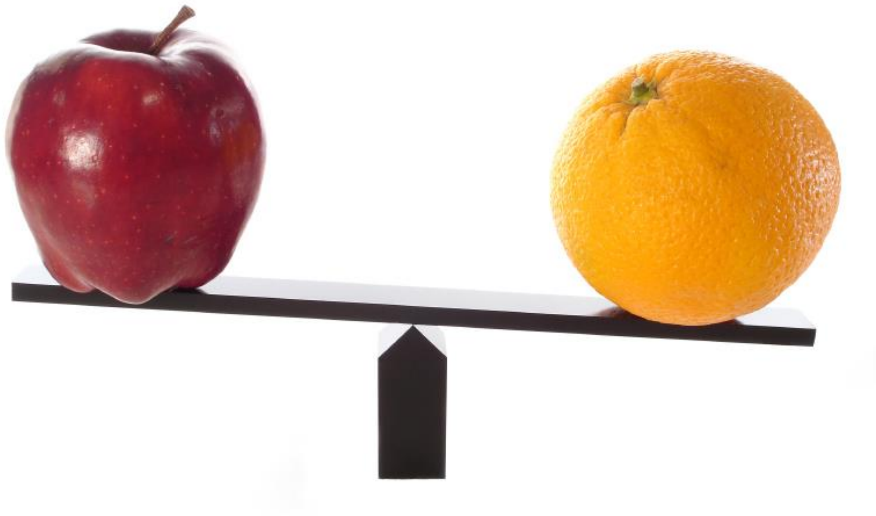
- In Indiana and Kentucky, as well as under federal law, overtime is calculated based on each individual work week. The employer may pay employees on a frequency that is not weekly, such as biweekly or semimonthly; however, the calculation of overtime must be based on the company's designated work week and is for time worked over 40 hours.

Terminology

- In the old days, many people used the term Salary for Exempt and Hourly for Non-exempt employees.
- We have to rethink how we use the terms “salary” and “hourly” because salary can be subject to overtime. “To-may-toe”? “To-mah-toe”?

Terminology (continued)

The terms that we should use are:
Exempt and **Non-exempt** Employees.



Correct Status Determination

- First an employee must be evaluated to ensure that they meet all of the exempt criteria that Susan just explained in order for the employee to continue with their exempt status.

- Once an employee is determined to be non-exempt, then one can explore the different payment options that are available.

Options for Paying Non-exempt Employees

1. **Pay an hourly rate and time and a half for overtime**.

2. Pay a fixed salary for a standard 40-hour workweek plus time and a half for overtime when worked.

3. Pay a fixed salary that includes overtime compensation for a standard workweek, but under certain conditions.

4. Pay a fixed salary for a fluctuating workweek.

Important Note: The payment of a fixed salary to a non-exempt employee will most likely require some manual intervention depending on the company's timekeeping and/or payroll software or payroll provider.

Employee Works a Standard Schedule

- Employee Works a Standard Schedule.
- The schedule does not normally fluctuate from week-to-week.

Employee Works a Standard Schedule

Employee works a standard 40 hours per workweek.

- Pay a salary for the 40 hours.
- Pay time and a half for any time worked over 40 hours in the workweek.
- Employer must check the timekeeping records for each workweek to determine if overtime is to be paid for the workweek.

Employee Works a Standard Schedule (continued)

Salary That Includes Overtime Compensation

- The employer and employee can agree to a fixed salary for a workweek for more than 40 hours, in which the salary includes overtime compensation.
  - Hourly rate is defined as well as number of hours and the calculation for overtime is time and a half of the hourly rate—which equates to be the fixed salary.
- However, if the employee’s schedule changes in any way during the workweek (either by working more or fewer hours), the employer must adjust the salary for that week.
- The employer must check the timekeeping records to determine if there is a change from the agreed upon hours for the workweek.

Employee Works a Fluctuating Schedule

- Employee Works a Fluctuating Schedule
- Fixed Salary/Fluctuating Workweek

Fixed Salary/Fluctuating Workweek

- There must be a clear mutual understanding by the employer and the employee that the fixed salary is compensation (apart from overtime premiums) for whatever hours the employee is called upon to work, and the employer pays the salary even though the workweek is one in which a full schedule of hours is not worked.
- Also, the salary must be sufficiently large to assure that no workweek will be worked in which the average hourly earnings fall below minimum wage.
- The overtime premium must be calculated for each workweek when more than 40 hours is worked and added to the employee's pay for that workweek.

Fixed Salary/Fluctuating Workweek (continued)

Example:

Joe has an agreement with his employer that he will receive a fixed salary of $800 per workweek and receive an overtime premium for all hours worked over 40.

Joe worked 50 hours in this workweek.
Calculation of Overtime Premium for this week is:
$800/50 hours = $16 X 50% = $8 OT Premium/hour
Joe's total pay for the workweek is:

Salary	$800	
OT Prem.	80	(10 X $8)
Total Gross Pay	$880	

Joe worked 32 hours in the next workweek.
Joe's total pay for the workweek is:

Salary	$800
Total Gross Pay	$800

Changing an Employee's Status from Exempt to Non-exempt

- Some companies pay their salaried/exempt employees on a different workweek from their hourly/non-exempt employees (using old terminology). Depending on the situation, this can present a problem for the employer.
  1. If maintaining the term "salaried employees," the company's timekeeping software may not be able to handle two different workweeks.
  2. When making a change to an employee's workweek, a calculation has to be done so that the employee receives the most beneficial calculation of pay during the change-over period.
- Companies will need to review and update their written policies. They should pay close attention to any benefits and paid time off policies that will affect any employee moving from exempt to non-exempt status.

Conclusion

Paying a salary to non-exempt employees will require careful consideration to be sure that the employee is paid overtime properly. Also, company policies need to be reviewed and updated.