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Salaried or hourly? Use 2 tests

A federal act explains job types and who is eligible for overtime.

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SPECIAL TO THE REGISTER

Workers are classified as exempt or nonexempt so companies know how to pay them: by the hour or with a fixed salary.

The Fair Labor Standards Act, a federal law, determines whether an employee is exempt or nonexempt. The act deals with minimum wage, overtime pay, recordkeeping and child-labor requirements for employers and employees. As a federal law, it does not overrule state wage and hour requirements unless it is more beneficial to the employee.



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Exempt means exempt from the overtime provisions of this law. Nonexempt employees are entitled to overtime for work performed beyond eight hours in a day. Employees are assumed to be nonexempt and must be paid for overtime work unless it can be determined they are exempt. Just because an employee is paid a "salary" does not mean he is exempt.

In January 2000, California returned to a system of daily overtime, where workers must be paid time and a half when they work more than eight hours in a day. Double time must be paid after the 12th hour. The previous system called for overtime pay when more than 40 hours were worked in a week.

Classifying employees as exempt or nonexempt is an inexact science. The determination must be made based on job duties associated with the position,

Back pay awarded

Courts have ordered several big companies to award back pay to workers who were misclassified as non-exempt. Here are a few.

Company	Year	Amount	Affected employees
Starbucks	2002	\$18 million	1,000 asst. managers & managers
UPS	2002	\$18 million	6,000 part-time employees
Auto club	2003	\$2.5 million	200 claims adjusters
Countrywide	2005	\$30 million	400 account executives
Ann Taylor	2006	\$6.5 million	Store managers
Siebel Systems	2007	\$27.5 million	Managers & assistant managers

Source: Court records, news reports

assuming the employee is paid on a salaried basis.

An up-to-date job description would be a good starting point.

Generally, nonexempt employees' work is routine with set standards and rules. The position generally does not require independent judgment or supervising duties. Typical examples of nonexempt positions include bank teller, bookkeeper, cashier, secretary, production worker and customer-service worker.

The law defines other occupations as exempt. These occupations create, interpret, apply policy and exercise discretion about significant matters. Examples include financial analysts and investment counselors. People in executive occupations who manage other employees are also exempt. Other exempt occupations may require advanced degrees, such as scientists or doctors, or creative work, such as actors and writers.

Recent legislative changes determined that exempt employees "customarily and regularly exercise independent discretion and independent judgment" and spend more than 50 percent of their time performing exempt duties.

The act offers two independent tests for determining if a position meets the

executive, administrative or professional exemptions standards—the General Test and the Short Test.

Companies need to look at the duties that are performed and not give inflated job titles. Say a company president takes a liking to a receptionist and her job title is changed to communications manager. Does that make her a manager, and does her job become an exempt position? Definitely not.

Misclassification of exempt/nonexempt status may result in fines and penalties imposed by the Department of Labor for up to two years of back overtime pay, or three years in the case of "willful" violation.

Human resources professionals must carefully assess exempt status under both federal and state tests and reduce the company's exposure to overtime claims.

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