

Webinar FAQ: 2025 FLSA Wage Requirements

Policy Questions

Q: Does the overtime policy actually need to be signed off as accepted by the employee?

A: It is recommended and best practice to have employees sign off or acknowledge any new policy. The sign off or acknowledgement should be either physical or electronic and stored in the employee file. It is best to use your payroll/HR platform to upload the document and obtain the employees signature.

Classification Questions

Q: What if I have a sales manager (executive) who is allowed to sell with free time? They are not required to sell.

A: As long as the sales manager passes the salary and duties test they can be classified as an exempt employee.

Q: Can you cover the exempt/non-exempt concept in regards to insurance specific employees? Service manager, licensed insurance producer.

A: You can classify any employee as non exempt. A non exempt employee would track all hours worked and be paid an hourly rate. This allows you to control salary costs and not increase the base salary for an exempt employee.

Pay, Overtime, & Time Tracking

Q: If I tell an employee they can't work overtime, but they take their laptop home and sell a policy in the evening or on the weekend and overtime was not approved. Can I still pay the commission or do I have to pay the overtime hour too?

A: If the employee is working on the evening or weekend they should be tracking the hours worked. If the employee failed to get approval for overtime you are not required to pay overtime. You can still pay the commission for that sale.

Q: Are you able to keep them as salary / Non exempt if they only work 35 hours a week due to lunch being paid for by the office?

A: You can keep an employee as salary / non - exempt, but they MUST track all hours worked and be paid overtime if they ever exceed 40 per week. For time tracking purposes they should clock in and out for lunch breaks.

Q: If you have a salaried sales person that you switch over to hourly, then you send them to a conference, how is the time tracked for their time at the conference? And the event has a dinner do we have to then pay them for that time as well?

A: Generally, all time spent on company business is considered time worked. It will be important to understand your state's requirements regarding travel and business events for non exempt employees. In this case a detailed travel policy and working hours policy are recommended.

Q: What is the best way to convert from salary to hourly?

A: You can take the annual salary and divide it by 2,080 hours to get the hourly rate. (example: \$40,000 / 2080 = \$19.23/hr)

Q: I have a salesperson who makes \$3,000 monthly base + commission?

A: Only 10% of the commissions can be considered when calculating the salary threshold. Most sales roles will not qualify as an exempt position, the recommendation would be to transition the employee to an hourly position and pay at least federal or state minimum wage, whichever is higher.

Q: What happens if they work overtime hours but do not get the approval prior to doing so? What are we responsible for paying?

A: You must pay them for the hours worked including overtime. A policy with the company's overtime policy and process should define the process to get approval for overtime and consequences for not following company policy up to and including disciplinary actions.

Q: I have my sales team on a \$12,000 annual base salary and large commission structures. They are under the assumption, the more or less they work, the more money they make. So do I need to track hours and now pay overtime for these people? This could possibly raise that "base" pay of \$12,000 I pay them a year.

A: Yes, you will need to track the hours worked and pay overtime and their base hourly wage must be at least the federal or state minimum hourly rate. You can adjust their commission structure. Clearly document any changes in your policy documents and have a clear commission structure document.

Q: Is there a way to pay per day and not keep track of hours on a daily basis? (not clock in and out), but figure 8 hours / day for however many days in the pay period?

A: No, you should be tracking all hours worked and employees should be paid per hour. A daily rate is similar to an annual salary, non exempt employees are required to track hours.

Q: Can an employee be classified as a non exempt salary employee who earns less than the DOL minimum wage?

A: Yes you can classify them as a non exempt salary employee, but you must track their hours and pay overtime pay for any hours worked over 40 hours per week (or 8 hours per day depending on the state).

Q: So if the sales manager makes a lot more than that with commissions? Ex: \$45,000 salary, but will end up making above \$100,000. We still need to increase their salary beyond the \$58,656 amount?

A: If the sales manager qualifies as an exempt employee per the duties test then the annual salary would need to be increased to a minimum of \$52,790.40. Commissions can make up 10% of the minimum wage requirement.

Q: If an employee makes much more than the minimum salary requirement through a combination of salary and commission, does that meet the requirement?

A: It will depend on the duties test and annual salary. Commissions can make up only 10% of the minimum salary requirement and they must pass the duties test to qualify for the exempt status. Most sales employees would be classified as non exempt employees and eligible for overtime pay.

Q: What about the commissions they earn?

A: As the employer you may adjust their commission structure, the FLSA ruling sets the minimum wage and status requirements.

Q: For documentation can an excel spreadsheet be used and then team members signs the hours once per pay period?

A: A proper time tracking system is best practice, but if you want to set up a process using excel you can. Be sure to document your policy and process and keep records of all hours worked in the employee files.

Q: What if you have an office manager that works part time and has agreed to a salary amount? Their hours vary based on what needs to be done that week.

A: If the office manager is making above the FLSA rate of \$58,565 annually and passes the duties test for an exempt employee then no changes are needed. If the employee is making below the threshold or does not pass the duties test, they will need to be converted to a non-exempt employee and you will be required to track all hours worked and pay overtime.

Q: So if we are not paying our staff the base minimum salary, should we move everyone to hourly and have them use a time clock?

A: Yes, ensure that the hourly rate is equal to or greater than the federal or state minimum wages.

Other Questions

Q: For services like ARS where we pay a flat rate fee - how should we adjust their pay?

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A: We are reaching out to ARS to verify what we think our recommendation should be and can update accordingly.

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Q: My sales agents are paid as 1099, is that a problem?

A: A 1099 sales agent is considered a contractor for your agency, you will need to complete the contractor "right-to-control test" to see if the sales agent is properly classified.

Q: Where can I find the state requirements for New York?

A: You can find the state specific requirements by visiting your states department of labor website

Updating your employee records

Gusto:

Change a single employee's classification:

1. Sign in to Gusto
2. Click the People section and select Team members
3. Click your employee's name
4. Go to the Pay tab
5. Click Edit next to the "Compensation" section - if you do not see this section, you may not have the required admin permissions Reach out to the primary admin on the account to update your permissions.
6. Under Employee Type, select one of the following from the dropdown.
 - a. Salary/No Overtime
 - b. Salary/Eligible for Overtime
 - c. Paid by the Hour
 - d. Commission only/No Overtime
 - e. Commission only/Eligible for overtime
7. Update the compensation rate or default hours per pay period, if applicable
8. Click Save
- 9.

ADP:

To update an employee's exempt/non-exempt status in ADP, navigate to the employee's profile, access the "Job" tab, then locate the "Compensation Card" where you can edit the exemption status by selecting either "exempt" or "non-exempt" when modifying their pay rate; this is usually done by clicking the "edit pencil" icon on the card

Others:

You will need to check under the employees pay or job profile.

Next Steps:

Speak with a member of our team regarding your company's wage requirements and 2025 budget:

<https://club.capital/schedule-a-demo/>

Review your state requirements for 2025: <https://www.dol.gov/agencies/whd/minimum-wage/state>

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