



Fair Labor Standards Act

Express Personnel Services wants to help your organization be aware of common human resource issues and educate you on how to comply with the Fair Labor Standards Act (FLSA). The FLSA, a division of the Department of Labor, is a wage and hour law that covers topics such as the minimum wage, exempt and non-exempt classifications and overtime regulation. For more information on complying with the FLSA or to find out how Express can work with you to solve your human resource challenges, contact Express Personnel today.

HR Tip No. 1: Highly compensated employees

Normally, to qualify as an exempt employee the employee must primarily perform certain administrative, professional or executive duties. However, highly compensated employees just have to perform one of the job duties of an exempt executive, administrative or professional employees to be considered exempt. Highly compensated employees are those with salaries of \$95,000 or more per anniversary, calendar or fiscal year.

HR Tip No. 2: Computer employees

Computer employees must meet the annual salary minimum, but may do so with either a salary of \$455.00 per week or \$27.63 per hour. If the employee is paid on a salary rather than hourly basis, the employee's pay cannot be subject to deductions inconsistent with the salary basis requirement. Additionally, the employee's primary duties must fall into one of four categories:

- Application of systems analysis techniques and procedures
- Design, development, documentation, analysis, creation, testing or modification of computer systems or programs
- Design documentation, testing, creation or modification of computer programs related to machine operating system
- A combination of these duties

HR Tip No. 3: Outside salespeople

Outside salespeople are exempt under the FLSA, which means they don't have to be paid hourly wages or overtime because most cannot do their jobs in a set 40-hour period or within the confines of an eight-hour day. Some take clients to dinner one evening and then meet them at their offices first thing the next morning. They are also away from home quite often. To pass the duty test, a sales person:

- Must make most of the sales or obtain orders away from the office
- Must spend at least 80% of the time directly involved in either making a sale or related duties, such as assuring the proper products are being shipped to the customer

To pass the salary test, a salesperson must regularly receive the same amount of pay regardless of the hours worked and cannot be docked for hours not worked in a day.

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HR Tip No. 4: Qualifying for the administrative exemption

To qualify for the administrative exemption, an employee must have a primary duty involving performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers. It must include the exercise of discretion and independent judgment with respect to matters of significance. The regulations also attempt to clarify "matters of significance," noting that the phrase refers to the level of importance or consequence of the work performed.

HR Tip No. 5: Qualifying for the executive exemption

The employee must:

- Have a primary duty involving management of an enterprise or a customarily recognized department or subdivision of the enterprise
- Customarily and regularly direct the work of at least two or more other full-time employees or their equivalent
- Have the authority of the employer to hire or fire other employees, or the employee's suggestions and recommendation as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight

Generally, to fall within this exemption, the employee must give recommendation pertaining to employees whom the executive customarily and regularly directs.