

It's up to employers to determine whether to classify an employee as exempt or nonexempt under the Fair Labor Standards Act (FLSA). The key consideration: Exempt workers aren't eligible for overtime pay. Rather, they're paid for the job they do, not the hours they keep.

To comply with the FLSA, employers need to regularly review their employee classifications. Generally, two requirements must be met to classify an employee as exempt: 1) they must earn a salary and 2) hold a position with duties the U.S. Labor Department designates as appropriate for exempt positions. Those positions generally fall into six categories: executive, administrative, learned professional, computer professional, creative professional and outside sales.

AUDIT: TEST YOUR COMPLIANCE

To be considered exempt from overtime, an employee must generally be paid on a salary basis and his job duties must meet the Labor Department's standards for one of the six exemption categories discussed below.

Use this self-audit to test whether you're properly classifying workers as exempt.

■ Executive Employee

Answer the following questions to determine whether you've misclassified a worker as an exempt executive:

- | | <u>Yes</u> | <u>No</u> | <u>Don't Know</u> |
|---|------------|-----------|-------------------|
| 1. Is the employee's primary duty managing the enterprise or a department or subdivision of the enterprise? | | | |
| 2. Does the employee customarily direct the work of two or more other employees or their equivalent? | | | |
| 3. Does the employee have the authority to hire or fire, and do her recommendations carry significant weight if unauthorized to make the final decision? | | | |
| 4. Is the employee paid the equivalent of at least \$455 per week on a salary basis? | | | |

If you answered "No" to any of these questions, you may have misclassified the worker as an exempt executive.

Note: If the employee is at least a 20 percent owner of the business and meets requirements #1 and #2 above, he need not meet the salary requirement in #4 or the authority requirement in #3.

■ Administrative Employee

Answer the following to determine whether a worker is misclassified as an exempt administrative employee:

	<u>Yes</u>	<u>No</u>	<u>Don't Know</u>
1. Is the employee's primary duty performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers?			
2. Does the employee exercise discretion and independent judgment with respect to matters of significance? That is, does he evaluate and compare possible courses of action and then make a decision or recommendation after considering the various possibilities?			
3. Is the employee paid the equivalent of at least \$455 per week on a salary basis?			

If you answered "No" to any of these questions, the employee may be misclassified as exempt administrative.

■ Learned Professional Employee

Answer the following to determine whether a worker is misclassified as an exempt learned professional:

	<u>Yes</u>	<u>No</u>	<u>Don't Know</u>
1. Is the employee's primary duty to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction?			
2. Is the advanced knowledge obtained by completing an academic course of study resulting in a four-year college degree or leading to certification?			
3. Is the employee paid the equivalent of at least \$455 per week on a salary basis?			

If you answered "No" to any of these questions, the employee may be misclassified as an exempt learned professional. **Exception:** Those who've completed the educational requirements for a law or medical degree need not meet the minimum salary requirement. Also, teachers need not be certified or meet the minimum salary requirement to qualify as learned professionals.

■ Creative Professional Employee

Answer the following to determine whether a worker is misclassified as an exempt creative professional:

	<u>Yes</u>	<u>No</u>	<u>Don't Know</u>
1. Is the employee's primary duty to perform work requiring invention, originality or talent in a recognized field of artistic endeavor such as music, writing, acting and the graphic arts?		<input type="checkbox"/>	<input type="checkbox"/>
2. Does the work require more than intelligence, diligence and accuracy (i.e., does it require "talent")?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

■ Creative Professional Employee *(continued)*

Yes No Don't Know

3. Is the employee paid the equivalent of at least \$455 per week on a salary basis?

If you answered "No" to these questions, you may have misclassified a worker as an exempt creative professional.

■ Computer Professional

Answer the following to determine whether a worker is misclassified as an exempt computer professional:

Yes No Don't Know

1. Is the employee paid at least \$455 per week on a salary or fee basis or, if paid hourly, at a rate of not less than \$27.63 per hour?

2. Is the employee's primary duty:

- Application of system analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or
- Design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or
- Design, testing, documentation, creation or modification of computer programs related to machine operating systems; or
- A combination of the aforementioned duties requiring the same level of skills?

If you answered "No" to #1 or were unable to answer "Yes" to any parts under #2, you may have misclassified the worker as an exempt computer professional.

■ Outside Sales Employee

To determine whether a worker has been misclassified as an exempt outside sales employee, answer the following questions:

Yes No Don't Know

1. Is the worker's primary duty making outside sales?
2. Does he regularly work away from the company's place of business?
3. Does the worker sell tangible or intangible items, such as goods, insurance, stocks, bonds or real estate, or obtain orders or contracts for services or the use of facilities?

If you answered "No" to any of these questions, you may have misclassified the worker as an exempt outside sales employee.