



Exempt or Non-Exempt? That's The (Compliance) Question

March 18, 2026

Today's agenda

1 Understanding exemptions

2 Federal exemption tests

3 Federal and state interaction

4 Q&A

What does it mean for an employee to be “exempt?”

- Under the Fair Labor Standards Act (FLSA), most employees in the United States must be paid:
 - At least the federal minimum wage for all hours worked, and
 - Overtime pay of not less than 1.5x their regular rate of pay for all hours worked over 40 hours in a workweek.
- If employees meet certain requirements, they are exempt from the FLSA’s minimum wages and overtime requirements.
- If an employee is exempt, this typically means that the employer is not required to:
 - Track the employee’s time,
 - Pay the employee at least minimum wage for all hours worked, or
 - Pay the employee for overtime.

The “white collar” exemptions

There are exemptions from the FLSA's minimum wage and overtime requirements for five major categories of employees:

- 1 Executive
- 2 Administrative
- 3 Professional (Learned Professional & Creative Professional)
- 4 Computer Employee
- 5 Outside Sales

Employees who can't be exempt

The FLSA's exemptions do not apply to these categories of workers:

1. “Blue collar” workers, such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, and laborers.
2. Police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees.

What employers want vs. what employees want

→ **Employers** generally want as many of their employees as possible to be classified as exempt, so they aren't required to:

- ◆ Track the employees' time, and
- ◆ Pay the employees overtime.

→ **Employees** are sometimes confused about what it means to be exempt or non-exempt.

→ Some employees see being “exempt” as a sign of status or importance.

→ They can be offended when they are classified as non-exempt—despite having more protections and potentially making more money than they would if they were classified as exempt.

Consequences of misclassifying an employee as exempt

- The consequences for misclassifying an employee as exempt can be severe and include:
 - ◆ Payment of unpaid overtime going back up to 3 years;
 - ◆ Liquidated damages, often equal to the sum of the unpaid wages, and
 - ◆ Attorneys' fees and costs.
- In cases of wilful or repeated misclassification, penalties can be even more severe.

Employee classification

Exempt vs. Non-Exempt

- **Salary basis test:** The employee must receive a fixed, predetermined salary that does not fluctuate based on the quality or quantity of work performed.
- **Salary-level test:** The salary must meet a minimum federal threshold. This threshold is currently \$684 per week, or \$35,568 per year.
- **Duties test:** The employee's primary job responsibilities must align with the specific duties of the exemption (e.g., executive, administrative, or professional).

Contractor vs. Employee

Different tests for FLSA, IRS, and ERISA

- All are complicated multi-factor tests.
- The FLSA considers the “economic realities” of the relationship.
- Considers behavior controls, financial control, and the nature of the relationship.
- Factors like: Established work hours, discipline, length and consistency of relationship, how integral the worker is, and training.

SixFifty offers a [🔗 Employee vs. Contractor Analyzer](#) and an [🔗 Exempt Employee Analyzer](#) tool!

What makes an employee exempt?

- Almost all exemptions have two requirements:
 - ◆ A wage requirement; and
 - ◆ A job duties requirement
- Wage requirements care about **how much money an employee makes**, while job duty requirements care about **the substantive work they perform**.
- We will be looking at 7 exemptions today: Executive, Administrative, Learned Professional, Creative Professional, Computer Employee, Outside Sales, and Highly Compensated

But first: Let's define “salary”

Most exemptions require employees to be paid on either 1) a salary basis, or 2) a fee basis

- Being paid on a “salary basis” means an employee regularly receives a set amount of pay on a regular basis
 - ◆ Employees paid on a “salary basis” must receive full pay for any week in which they do any work, regardless of the number of days or hours worked
- An employee is paid on a “fee basis” if they receive a set amount of pay per-job done, regardless of the time required for its completion
 - ◆ Wage requirements are typically measured in salary terms, so fee amounts must be converted to determine compliance

 [DOL fact sheet](#)

The executive exemption

→ Salary test:

- ◆ Must earn at least \$684/week on a salary (not fee) basis

→ Job duties test:

- ◆ Must have a “primary duty” of “managing” your organization (or a subdivision of your organization);
- ◆ Must regularly direct the work of at least 2 full-time employees; and
- ◆ Must have the authority to give input on (or make) hiring/firing decisions

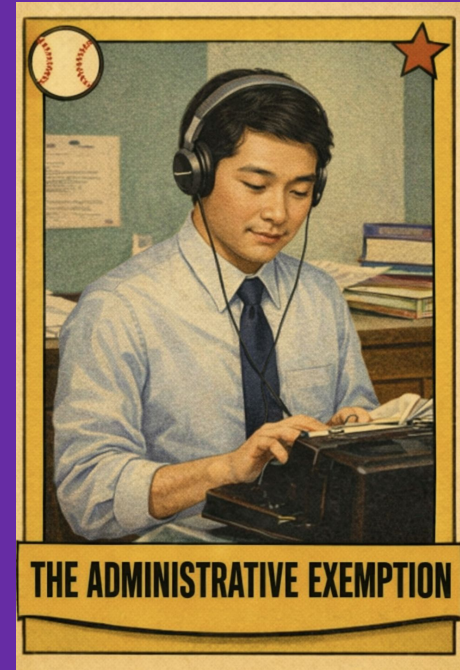
[!\[\]\(9ea682cef02bbbdc0191f78cdae1d433_img.jpg\) DOL fact sheet](#)



The administrative exemption

- **Salary test:**
 - ◆ Must earn at least \$684/week on a salary or fee basis
- **Job duties test:**
 - ◆ Must have a “primary duty” of performing “office or non-manual work directly related to the management or general business operations” of your organization (or customers’ organizations); and
 - ◆ Must exercise discretion and independent judgment on non-trivial matters.

 [DOL fact sheet](#)



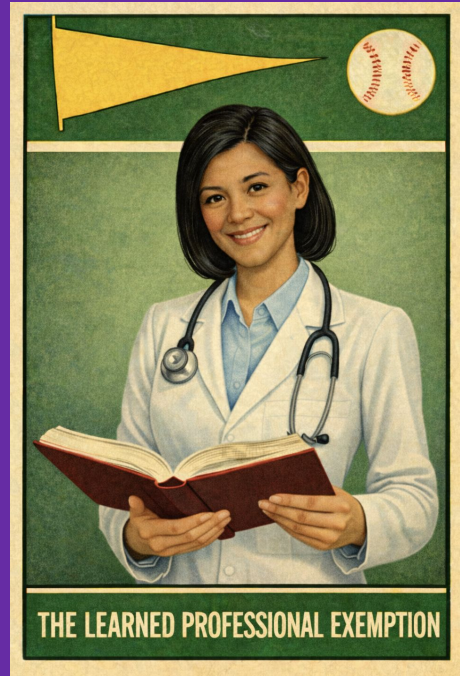
The learned professional exemption

→ Salary test:

- ◆ Must earn at least \$684/week on a salary or fee basis

→ Job duties test:

- ◆ Must have a “primary duty” of performing “work requiring advanced knowledge” that “includes work requiring the consistent exercise of discretion and judgment;” and
- ◆ The advance knowledge used must be in a “field of science or learning” that is usually gained through a “prolonged course of study” (e.g., graduate or professional school).



[!\[\]\(8942d28dc4da2a769efbb41dc37c5a1c_img.jpg\) DOL fact sheet](#)

The creative professional exemption

- **Salary test:**
 - ◆ Must earn at least \$684/week on a salary or fee basis
- **Job duties test:**
 - ◆ Must have a “primary duty” of performing “work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor”

[!\[\]\(869f8db8cb6058a4d20fc99f4521bf06_img.jpg\) DOL fact sheet](#)



The computer employee exemption

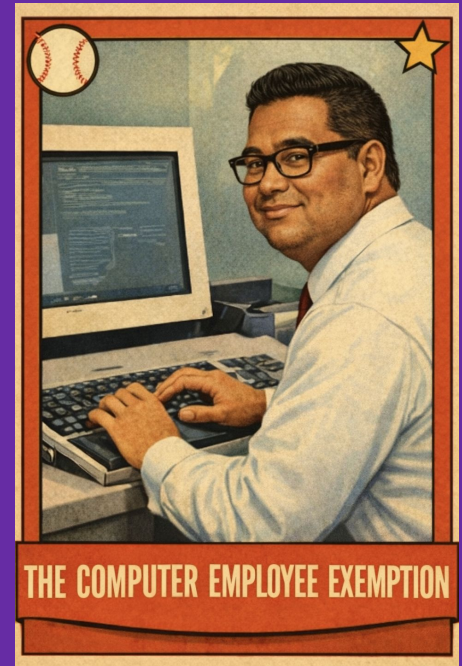
→ Salary test:

- ◆ Must earn at least \$684/week on a salary or fee basis; or
- ◆ Must earn at least \$27.63/hour if paid hourly

→ Job duties test:

- ◆ Must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field; and
- ◆ Must have primary duty of performing work related to the creation, development, maintenance, testing, or modification of computer systems or programs.

[!\[\]\(2c3352433bff267ed8ae00945ed009eb_img.jpg\) DOL fact sheet](#)



The outside sales exemption

→ Salary test:

- ◆ Not applicable

→ Job duties test:

- ◆ Must have a “primary duty” of “making sales” or soliciting orders or contracts; and
- ◆ Must be customarily and regularly work outside of your organization’s place of business (i.e., they should predominantly work outside the office)

[🔗 DOL fact sheet](#)



The highly compensated employee exemption

- **Salary test:**
 - ◆ Must earn at least \$684/week on a salary or fee basis; and
 - ◆ Must earn total annual compensation of \$107,432 or more
- **Job duties test:**
 - ◆ Must regularly perform at least one of the duties of an exempt executive, administrative, or professional employee from the standard job duties tests for those exemptions.

[!\[\]\(cb81769881af651ccb735a5045b47375_img.jpg\) DOL fact sheet](#)



How federal and state exemptions interact

FLSA applicability: Employers

Have 2 or more employees, and:

- Have an annual dollar volume of sales or business done of at least \$500,000; or
- Are hospitals, businesses providing medical or nursing care for residents, schools, and government agencies





FLSA applicability: Employees

Even if the FLSA does not apply to an employer, individual employees are protected by the FLSA if their work regularly involves them in commerce between states ("interstate commerce")

Examples include those who:

- Produce goods that will be sent out of state
- Regularly make calls to people in other states
- Handle records of interstate transactions
- Travel to other states on their jobs
- Perform janitorial work in buildings where goods are produced for shipment outside the state
- And etc.

Savings clause

29 U.S. Code § 218(a) - Relation to other laws

- No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter.
- No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

State differences

States often have slight differences from federal requirements. Below are some of the common culprit states with higher standards than federal law.

	California	Colorado	New York
Salary Test	Threshold of \$1,352/wk tied to minimum wage	Threshold of \$1,111.23/wk tied to COMPS Order	Threshold of \$1,199.10/wk tied to minimum wage (no professional threshold)
Duties Test	Quantitative—at least 50% of work time must be spent on exempt tasks	Both qualitative and quantitative	Qualitative—main job function must be to perform exempt tasks

Most protective standard: Salary

Federal law says “exempt”

- Performs executive duties
- Earns salary of \$800 per week (**over** \$684)

State law says “non-exempt”

- Performs executive duties
- Earns salary of \$800 per week (**under** the CO-required \$1,111.23 per week)

Status: Non-Exempt

- Regardless of the fact that this employee is exempt under the FLSA, the employee is not exempt under CO law
- The savings clause dictates that state law be followed here, as the more restrictive requirement

Most protective standard: Duties

Federal law says “exempt”

- Performs executive tasks as primary duty
- Earns salary of \$1,200 per week (over \$684)

State law says “non-exempt”

- Performs supervisory tasks as a primary duty, but only 40% of the time
- Earns salary of \$1,200 per week (over the CO-required \$1,111.23)

Status: Non-Exempt

- CO expressly requires that 50% of work time be spent on duties directly related to supervision
- The savings clause dictates that state law be followed here, as the more restrictive requirement

Most protective standard: Duties

Federal law says “non-exempt”

- Performs professional tasks as primary duty
- Earns salary of \$600 per week (under required \$684)

State law says “exempt”

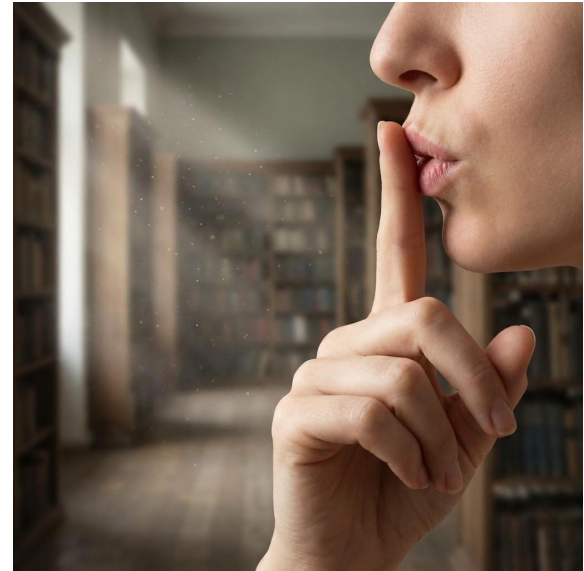
- Performs professional tasks as primary duty
- Salary unimportant, since NY doesn’t have a salary threshold for the professional exemption

Status: Non-Exempt


- Because NY has no salary requirement, if the employee performs requisite duties, they are exempt
- Still, the FLSA requires minimum salary of \$684/week, so employee is non-exempt

Silence?

- Some states don't address certain exemptions in their code. For instance:
 - Computer exemption not recognized by CT, HI, MA, MN, NV, NJ, NM, PA, RI, or VT
 - Outside sales exemption not recognized by NV
- If an exemption isn't recognized under state law, employees in that state cannot qualify—even if they fit the FLSA criteria.



Explore SixFifty's updated Exempt Employee Analyzer



Account Manager

Exemption	Status	Analysis
Professional Exemption	Exempt	<input checked="" type="checkbox"/>

Q&A time!

Ready to streamline employee
classification?

Scan to book a personalized demo of the
SixFifty HR compliance platform



Or visit sixfifty.com/demo



Learn more at sixfifty.com