

## Exempt vs. Non-Exempt Classification FAQs

Correct classification of employees as overtime exempt or non-exempt is frequently at the root of expensive wage and hour litigation – yet perhaps the most commonly misunderstood area of employment law. These are several of the most frequently asked questions about employee classification:

### **Q: Are all salaried employees exempt?**

A: No. While many employers treat “salaried” as being synonymous with “exempt,” as many employers have discovered to their detriment, that is simply not the case. Exemptions from being due overtime pay under both federal and New York law require that employees be paid a significant minimum annual salary *and* to be primarily engaged in exempt duties, which are specifically defined for each exemption.

### **Q: Aren't all managers or supervisors exempt?**

A: No. Contrary to popular belief, job titles are largely irrelevant. Employers must evaluate the job duties *actually performed* by the employee in question. For example, many managers, in addition to supervising employees (an overtime-exempt task) also perform routine tasks (such as working cash registers, answering phones or stocking shelves). These multi-tasking managers are exempt *only* if they spend more than 50% of their time on exempt tasks (and meet the salary requirements). Exempt duties are specifically defined by each type of exemption, and usually require employees to exercise “independent discretion and judgment,” which, in actual practice, is a very high bar for exemption.

### **Q: Is the U.S. Department of Labor's recently released Overtime Rule important?**

A: It certainly is. While a number of lawsuits have been filed challenging the U.S. Department of Labor's new Overtime Rule, unless implementation of the Rule is enjoined:

- effective July 1, 2024 the minimum annual salary for executive, administrative, and professional exempt employees will increase to \$43,888;
- it will increase to \$53,656 on January 1, 2025;
- the “highly compensated employee” annual salary threshold will increase to \$132,964 on July 1, 2024; and
- it will increase to \$151,164 on January 1, 2025.

### **Q: Does proper classification of employees into exempt and nonexempt classifications really matter?**

A: It does, because the price of misclassifying employees is high. Employers who misclassify employees as exempt may be liable for unpaid overtime wages and wage statement violations, plus 100% liquidated damages, plus fines and penalties.

To make matters worse, these misclassification cases are difficult to defend because employers usually do not keep time records for these employees, in which case, courts permit employees to provide their own estimates of overtime hours worked.

**Q. What should employers do?**

A. Employers should regularly audit exempt classifications and job descriptions to be sure that the employees' *actual* job duties meet the statutory requirements for exemption.