



I Have Employees to Pay... Now What?: How to Properly Classify an Employee

You may constantly find yourself asking “I have employees to pay... now what do I do?” Managing payroll for employees can be a tedious and sometimes difficult task. To complicate things even more, deciding on how to classify employees for the purpose of payroll poses more questions. In this article we address the differences between exempt vs. non-exempt employees.

Exempt vs. Non-Exempt Employees

One of the first – and perhaps most important – steps is to be sure every employee is properly classified. All employees are either exempt or non-exempt. This classification will determine all the aspects related to wages for each individual that are necessary to remain in compliance with wage and hour laws.

Exempt employees are those who are typically paid a fixed salary and must meet certain requirements for an exemption. “Exempt” means exempt from the minimum wage and overtime provisions of the law. Exempt employees are often times in a supervisory or management position (however, there are a variety of exemptions depending on the type of industry or position of an individual). While exempt employees are not entitled to overtime if they work more than 40 hours in a workweek, employers may not pay them less for working fewer hours (with very limited exceptions).

Non-Exempt employees are those who are covered by the minimum wage and overtime provisions of the law. Employers are required to keep track of the number of hours worked by each non-exempt employee, regardless of the method of pay. Wages to non-exempt employees can be paid by the hour, on a piece rate basis, by the day, with a commission structure, etc. – or any combination of these methods. NONE of which eliminate the requirement to 1) keep track of all hours worked, 2) pay at least minimum wage for all hours worked and 3) pay overtime when applicable.

Any employee can be non-exempt (i.e. paid hourly and overtime when applicable), but not just any employee can be exempt – they must meet the criteria for an exemption. Being paid on a salary basis is not synonymous with being an exempt employee. While most exempt employees are salaried, this pay structure does not automatically make someone exempt. Nonexempt employees can be paid on a salaried basis as well but their hours will still need to be tracked, paid at least minimum wage, and receive overtime if they work over 40 hours in a workweek.

Likewise, even if an employee’s duties qualify for an exemption, if you don’t follow the rules (i.e. if you deduct from their pay), an employer will lose the exemption and could owe back wages for weeks in which the employee worked overtime.

Misclassification of employees as exempt when they do not meet the qualifications can be a very costly mistake. In a typical wage and hour lawsuit a non-prevailing employer will end up paying back wages plus damages equal to the amount of the back wages, an attorney to represent them, as well as the employees’ attorneys’ fees.

If you have specific questions about this topic or are interested in ways that FrankCrum can help you with HR and wage and hour issues you’re currently facing, please contact us. We’re here for you.

Legal Notice – The purpose of this information is to assist in the discussion of risk, concerns and general requirements. It is not legal advice or judgment of a business’s compliance or non-compliance. It is recommended that you seek qualified legal counsel familiar with your particular circumstances before taking any action.