



## Exempt or Non-Exempt, That is the Question

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## What is the FLSA?

- **Federal law passed in 1938; revised April 20, 2004**
- **Enforced by US Department of Labor**
- **Covers**
  - **Overtime**
  - **Minimum Wage**
  - **Child Labor**
  - **Equal Pay**
  - **Recordkeeping**

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## FLSA Key Concepts

- **Unless employer can show otherwise, all employees are subject to FLSA protections**
- **All employees must be paid 1.5 times their regular rate of pay for hours worked over 40 in a workweek**

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## Five Common Mistakes

1. **Always classifying salaried employees as exempt**
2. **Always classifying supervisors as exempt**
3. **Classifying exemptions based upon job descriptions or titles only**
4. **Making deductions from exempt employees' paychecks**
5. **Classifying college educated employees as exempt**

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## Classification of Positions

- **Two types**
  - Exempt – Not covered by FLSA; paid for quality of work, not quantity of work
  - Nonexempt – Covered under FLSA; paid for quantity/time of work
- **Three step analysis**
  1. Salary Basis Test
  2. Exemption Applicability
  3. Job Duties

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Exempt or Non-Exempt?  
**STEP 1: SALARY BASIS TEST**

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## Step 1: Salary Basis Test

- **Must be paid at least \$455\* per week**
  - **\*Connecticut employees must be paid \$475**
- **No reduction permitted due to variation in quantity or quality of work**
- **Must be paid full salary for any week in which employee performs any work**
- **Need not be paid for any workweek when no work performed**
- **Outside Sales Exemption**

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## Step 1: Permissible Deductions

- **Absence from work for one or more full days for personal reasons, other than sickness or disability**
- **Absence from work for one or more full days due to sickness or disability if deductions made under bona fide policy or practice of providing wage replacement benefits for these types of absences**
- **To offset any amounts received as payment for jury fees, witness fees, or military pay**

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## Step 1: Permissible Deductions

- Penalties imposed in good faith for violating safety rules of “major significance”
- Unpaid leave taken pursuant to FMLA
- Unpaid disciplinary suspension of one or more full days for violations of workplace conduct rules
  - CT - Only permits deductions for suspensions longer than one week
- Proportionate part of employee’s full salary may be paid for time actually worked in first and last weeks of employment

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## Step 1: Permissible Practices

- Taking deductions from exempt employees’ accrued leave accounts
- Requiring exempt employees to keep track of and record their hours worked
- Mandating that exempt employees work specified schedule

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## Exempt or Non-Exempt?

### STEP 2: EXEMPTIONS

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### Step 2: Applicable Exemptions

- Employee ***must*** perform one of below types of jobs
  - Executive
  - Administrative
  - Professional/Creative
  - Computer Professional
  - Outside Sales

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## Step 2: Basic Considerations

- Based on primary duties, not title
- Regularly exercises discretion and independent judgment
- Paid on a salaried basis for quality of work, not number of hours worked

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## Step 2: Executive

- **Requirements:**
  - Primary duty is management of enterprise or department or subdivision; *and*
  - Customarily and regularly directs work of two or more other full-time employees; *and*
  - Authority to hire, fire and discipline or suggestion given particular weight
    - Not specifically required under Connecticut law
- **Examples:**
  - Payroll Manager
  - HR Manager
  - Accounting Manager
  - Building & Grounds Director
  - Business Operations Manager

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## Step 2: Administrative

- **Requirements:**
  - Primary duty must be office or non-manual work; *and*
  - Directly related to management policies or general business operations; *and*
  - Customarily and regularly requires exercise of discretion and independent judgment with matters of significance
- **Examples:**
  - HR Generalist
  - Internal Auditor
  - Budget Analyst
  - Grants Specialist

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## Step 2: Learned Professional

- **Requirements:**
  - Primary duty must be in performance of work requiring advanced knowledge in field of science or learning
  - Customarily acquired by prolonged course of specialized instruction
- **Examples:**
  - Physician (M.D., D.D.S.)
  - RN
  - Architect
  - Lawyer
  - Teachers & Professors
  - Clinical Social Worker
  - Executive Chef

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## Step 2: Creative Professional

- **Requirements:**
  - **Primary duty must be performance of work requiring invention, imagination, originality, or talent**
  - **Performs work in recognized field of artistic or creative endeavor**
- **Examples**
  - **Musicians and composers**
  - **Actors and painters**
  - **Writers**

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## Step 2: Computer Professional

- **Requirements:**
  - **Compensated at a rate not less than \$455\* per week or \$27.63 an hour**
  - **Employed as computer systems analyst, programmer or software engineer or similar skilled worker**
- **Primary duties consist of:**
  - **Applications of systems analysis techniques or**
  - **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 systems**
- **Connecticut does not recognize this exemption!!!**

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## Step 2: Outside Sales

- **Requirements:**
  - **Performs sales work off company's premises**
    - **Inside sales specifically excluded from exemption**
  - **Primary duties include making sales or obtaining order or contracts for services or for use of facilities for which client or customer pays**
- **Examples**
  - **Sales Representative**
  - **Account Manager**
  - **Business Development Representative**

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## Step 2: Highly Compensated

- **Requirements:**
  - **Must perform non-manual work and**
  - **Paid more than \$100,000 per year and**
  - **Perform at least one of the duties of an executive, administrative or professional employee**
- **Connecticut does not recognize this exemption!!!**

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## Step 2: Some Non-Exempt Jobs

- **Office Services Assistant/Office Services Specialist/Executive Secretary**
- **Carpenter/Electrician/HVAC Tech**
- **Police Dispatcher/Police Officer**
- **Enrollment Services Assistant/Specialist**
- **Fiscal Technician**
- **Sous Chef**
- **CNA**

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## Exempt or Non-Exempt? **STEP 3: JOB DUTIES ANALYSIS**

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## Step 3: Job Duties Analysis

- If employee passes Step 1 and Step 2, HR should do complete review of the employee's job duties to ensure exempt status
- Job title is never determinative

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Exempt or Non-Exempt?

**LET'S TRY IT!**

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## Is this employee exempt?

- **Restaurant Employee**
- **Title: Sous Chef**
- **Supervised by Executive Chef and Chef De Cuisine**
- **Paid on salary basis (above \$600/week)**
- **Executes menu set by Executive Chef**
- **Not required to have degree in culinary arts but is continually instructed at restaurant**
- **Required to have 5-10 years of experience**
- **Oversees work of three less experienced part-time sous chefs (equivalent of 1.5 FTEs)**
- **Gives opinion on hiring, firing, promotions or discipline for lower level chefs, but no one listens**

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## Is this employee exempt?

- **Resident Hotel Manager**
- **Supervised by Owner**
- **Earns \$460 a week**
- **No formal education required, Associate's degree preferred**
- **Must have 5-10 years of experience in similar field**
- **Oversees work of 20 full-time and part-time employees**
- **Makes hiring, firing, promotions or discipline for employees**
- **Lives onsite and receives free lodging and food**

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## Exempt or Non-Exempt? WHY SHOULD YOU CARE?

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## US DOL Penalties

- **Misclassification determined**
  - **Good faith mistake (typically only once)**
    - 2 years of back pay
    - Same amount in “liquidated damages”
- **Willful violation**
  - 3 years of back pay
  - Same amount in “liquidated damages”
  - Attorney’s fees if lawyers involved in employees’ side
- **Connecticut - Typically only assesses fine for one violation in first time offenses**

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