

What's in a Job Title?

A Title Is Just a Word - Calling Someone A "Manager" Does Not Make Them Salaried-Exempt.

The Department of Labor is focusing on misclassification issues. Here are a few recent misclassification cases:

Barnes & Noble will pay approximately \$1 million in back overtime wages and attorneys' fees to bookstore café managers who actually did much the same work as the other workers, rather than spending the majority of their time actively doing executive "management" duties. *Broan et al. v Barnes & Noble, Inc.* (S.D. NY, 2021).

Jimmy Johns Will Pay \$1.8 Million for Misclassifying Restaurant Managers. In another case of calling someone a "Manager" doesn't make it so, Jimmy Johns Sandwich Shops will pay \$1.8 million to settle an FLSA case. The people it paid as salaried managers in fact worked primarily doing sandwich-making, order-taking, stocking, and other non-executive exemption level duties. Thus, they are entitled to overtime pay for the extra hours they worked each week. In *Re Jimmy Johns Overtime Litigation* (N.D. Ill, 2021).

An exempt employee is not eligible to receive overtime pay, and is excluded from minimum wage requirements. One of the main differences between exempt employees and non-exempt employees is that exempt employees receive a salary for the work they perform, while non-exempt employees earn an hourly wage.

Here are some basic guidelines about exempt employee benefits:

- The Fair Labor Standards Act (FLSA) provides no guarantees regarding overtime pay and minimum wage for exempt employees. Rather, an employer has the authority to determine what to pay these individuals for overtime work.
- Besides the FLSA, the federal government and individual states have several laws addressing the classification of employees and their rights. To ensure you classify employees into the correct category, it's important to learn about the position of labor laws on exempt and non-exempt employees.

Requirements for exempt employees

There are three main requirements employees must meet to be considered exempt, including:

Salary payment

Exempt employees earn a salary rather than an hourly rate, so employees are exempt so long as they are entitled to a monthly base payment higher than the FLSA minimum threshold, regardless of the number of hours of work they complete per week.

Total earnings

Employees must earn the salary threshold set by the FLSA to be exempt. The minimum salary threshold of the FLSA changes every year, so it's important to stay current on the regulations for proper employee compensation. For 2020, employees must earn a minimum of \$684 per week or \$35,568 per year to have exempt status. Conversely, employees who earn below this amount are designated as non-exempt.

Job duties

Beyond meeting salary and earning requirements, exemption generally only applies to employees who hold professional roles that require a higher level of expertise and knowledge.

Types of exempt employees

There are several types of exempt employees, including:

Executive exemption

Employees who hold executive exemption status must meet the following requirements:

- Regularly supervise two or more full-time employees or four part-time employees
- Be responsible for managing at least part of the business
- Play an important role in the job status of other employees, such as hiring and delegating tasks

Administrative exemption

Employees must meet the following criteria to have administrative exemption status:

- Perform office or non-manual work directly related to the business operations or management of the organization and its customers
- Exercise independent judgment and discretion over important business decisions without reporting to another person

Professional exemption

Employees must meet the following requirements to have a professional exemption status:

- Perform job duties that require specialized education and exercising discretion and judgment
- Have a college degree or higher educational qualifications in their particular field
- Hold a creative professional exemption that applies to employees who work in a creative or artistic field, and use their originality, talent, imagination and inventiveness to perform job duties

A non-exempt employee, unlike exempt employees, are eligible for overtime pay and hourly wages.

Evaluate your “Managers” and make sure they are performing at the exemption level, as title alone doesn’t qualify as an exemption.