

The Basics of Wage and Hour Laws

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Preface

The Fair Labor Standards Act (FLSA) is a federal law that regulates minimum wage, overtime pay, child labor and recordkeeping. Employees covered by the FLSA are generally classified as “non-exempt” or “exempt” from overtime requirements. Most employees are classified as non-exempt, unless they meet very specific salary and duties criteria. Non-exempt employees must be paid for each “hour worked”, whereas, exempt employees generally receive a set salary for each week in which work is performed.

The Basics of Wage and Hour Laws

Every week, RUN Powered by ADP® clients receive our HR Tip of the Week. With practical, “how-to” information, these articles help small employers to navigate day-to-day HR and employee challenges. Here, we compiled our top tips on employee classifications and pay.

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Snow storms and other weather conditions can create unsafe travel conditions. When this happens, employers may be forced to close and/or employees may not be able to report to work. In this article, learn how to handle pay issues resulting from inclement weather.

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Determining Exempt vs. Non-Exempt Status

Under the Fair Labor Standards Act (FLSA), employees are classified as either exempt or non-exempt from minimum wage and overtime requirements. Exempt work typically involves a high level of discretion, judgment, and independent decision making. Non-exempt work typically follows set standards, procedures, or rules, and generally does not require regular exercise of discretion and independent judgment.

Non-Exempt Employees:

Non-exempt employees are eligible for overtime and must be paid at least the minimum wage for each hour worked. Under federal law, overtime is due when a non-exempt employee works more than 40 hours in a workweek. Overtime is paid at a rate of one and a half times the employee's regular rate of pay.

Note: Several states have their own overtime pay requirements. Check your state law to determine when overtime is due.

Exempt Employees:

Exempt employees generally must be paid a set salary each week, regardless of how many hours they work. The most common types of exemptions (sometimes referred to as White Collar Exemptions) are: administrative, executive, professional, computer professional, outside sales, and highly compensated professional, outlined below.

#1: Administrative Exemption

Salary Level Test: Paid a salary of at least \$455 per week.

Standard Duties Test: Primary duty must involve:

- Office or non-manual work directly related to management or general business operations; *or*
- Administrative functions directly related to academic instruction or training in an educational establishment, department, or a subdivision of an educational establishment; **and**
- Exercising discretion and independent judgment on matters of significance.

#2: Executive Exemption

Salary Level Test: Paid a salary of at least \$455 per week.

Standard Duties Test: Primary duty must involve:

- Managing the company, a department, or subdivision of the company;
- Customarily and regularly directing the work of two or more employees; **and**
- Hiring, firing, and making other related decisions.



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#3: Professional Exemption

Salary Level Test: Paid a salary of at least \$455 per week.

Standard Duties Test: Primary duty must meet the "learned professional" or "creative professional" criteria below:

- Learned professional: Advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized instruction.
- Creative professional: Invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

#4: Computer Professional Exemption

Salary Level Test: Computer systems analysts, programmers, software engineers, and workers in similar computer-related jobs are exempt if they are paid at least \$27.64 per hour or \$455 per week.

Standard Duties Test: Primary duty consists of:

- Application of systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional specifications; *or*
- Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, based on user or system design specifications; *or*
- A combination of the above duties which requires the same level of skill.

#5: Outside Sales Exemption

Salary Level Test: There is no minimum salary requirement.

Standard Duties Test: Primary duty involves:

- Selling or obtaining orders, or contracts, for services or the use of facilities for which a consideration will be paid by the client or customer; **and**
- Customarily and regularly working away from the premises.

#6: Highly Compensated Professional Exemption

Salary Level Test: Total annual salary of at least \$100,000.

Standard Duties Test: An employee with a total annual compensation of at least \$100,000 is exempt, without passing the full duties test if the employee:

- Customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee; **and**
- Has the primary duty of performing office or non-manual work.

The employee's annual compensation may include: commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned. The employee's annual compensation may not include: board or lodging, premium payments made on their behalf, contributions to retirement plans, or the cost of other fringe benefits.

State Law Impact: States may have their own tests for determining exempt status. Be sure to check your state law before classifying an employee as exempt.

Independent Contractors: Frequently Asked Questions

Working with an independent contractor generally relieves employers of certain obligations related to employment taxes, minimum wage, overtime, benefits, and workers' compensation insurance. In recent years, government enforcement agencies have focused on employers who may be using the classification improperly to avoid these requirements. Given heightened enforcement, employers need to ensure all contractors are properly classified. However, making the determination is not always black and white. The following are some of the most frequently asked questions related to independent contractor classifications:

Q: What are independent contractors?

A: In general, independent contractors are self-employed individuals who offer their services to the general public under terms specified in a contract or agreement. Generally, whether a person is classified as an independent contractor or employee depends on the amount of control exercised by the employer. The more control the business has over the individual, the more likely that individual will be perceived as an employee and not an independent contractor.



Q: What are the penalties for misclassifying employees as independent contractors?

A: The consequences for misclassification can be significant. In addition to owing back pay, overtime, and benefits to a misclassified worker, the employer may be ordered to pay back taxes, interest, and fines to the government. In some states, employers that intentionally misclassify a worker may also face criminal charges or stop-work orders.

Q: How do I determine if a worker is an employee or an independent contractor?

A: A worker is presumed to be an employee unless he or she meets specific criteria. There are a variety of tests used to be make this determination, including those used by the Internal Revenue Service (IRS), Department of Labor, the Equal Employment Opportunity Commission, and several states. While each test is slightly different, most tests look at:

- The amount of control the business exercises over the worker;
- Whether the worker's services are an integral part of the business;
- The permanency of the relationship; **and**
- The worker's investment in facilities, equipment, and tools.

Employers should carefully review each test and consult legal counsel before classifying any individual as an independent contractor.

Q: What is the IRS Common Law Test?

A: The IRS Common Law Test is the most commonly used test for determining independent contractor status. This test evaluates whether a worker is an independent contractor or employee for federal tax purposes. It has three parts that examine factors related to behavioral control, financial control, and the type of relationship between the business and the worker (covered below).

Q: What factors are considered when looking at behavioral control?

A: The first part of the IRS test examines whether there is a right to control where and how the worker does the work by evaluating:

- The degree of instruction (detailed instructions indicate the worker is an employee);
- Evaluation systems (measuring how the work is performed rather than the end result is an indication of an employer/employee relationship); **and**
- Training (which indicates the employer wants the job done in a particular way and is strong evidence of an employer/employee relationship).

Q: What factors are considered when looking at financial control?

A: The second part of the IRS test looks at whether the company has a right to control the business aspects of the worker's job, such as how the worker is paid, whether expenses are reimbursed and who provides the supplies. When compared with employees, independent contractors are more likely to: have unreimbursed business expenses; make significant investments in supplies and facilities; make their services available to other businesses; realize a profit or loss; and to be paid a flat fee or on a "time and materials" basis.

Q: What factors are considered when looking at the nature of the relationship between worker and employer?

A: The third part of the IRS test looks at how the worker and business perceive their relationship. Questions employers should consider include:

- Is there a written contract describing the relationship?
- Is the worker available to perform services for other businesses?
- What is the permanency of the relationship?
- Are the services performed by the worker an integral part of the business?
- Is the worker entitled to employee type benefits?

Q: Is there a set number of IRS factors that must be met to classify a worker as an independent contractor?

A: No. Under the IRS test, there is no set number of factors that must be met, and no one factor stands alone in making the determination. An employer must weigh all factors and take into account other applicable tests when determining whether an individual is an employee or an independent contractor.

Q: I gave workers a 1099. Does it mean they are automatically independent contractors?

A: No. A common misconception is that a worker's classification is determined by whether a Form 1099 or Form W-2 is provided to them at the end of the year. The reality is the classification determination must always be made on the basis of whether the worker meets the specific criteria established by applicable federal or state law.

Q: Can I lay off employees and bring them back as independent contractors?

A: As mentioned above, if the requirements of federal and state tests for independent contractors are not met, the worker is an employee, regardless of how you characterize the relationship. Simply reinstating an employee and calling them an independent contractor is not going to change his or her status as an employee. Unless the nature of the relationship changes so that it satisfies the tests, the worker would still be considered an employee.

Q: Can a worker waive his or her right to be considered an employee and opt to be a contractor?

A: No, a worker cannot waive his or her employee status through a contract or otherwise. Again, the specific criteria of the independent contractor tests must be satisfied to classify a worker as an independent contractor. Otherwise, the worker is an employee, no matter what a contract or waiver says.

Q: How long can an independent contractor work for me?

A: While there is no specific limit, a continuing relationship between the business and worker is considered an indication of an employer/employee relationship. Since the relationship can change over time, if and when contracts are renewed or extended, review whether the worker still qualifies as an independent contractor.

Q: What are my options if I have applied the tests and I am still unsure whether a worker is an employee or independent contractor?

A: When in doubt, classify the worker as an employee and seek legal counsel.

You may also request an official determination from the IRS using Form SS-8. Keep in mind, however, that it ordinarily takes at least six months to get an IRS determination.

Q: What are the paperwork requirements for independent contractors?

A: If you've made the determination that the person you're paying is a bona fide independent contractor, you should have the contractor complete IRS Form W-9. Form W-9 should be retained for at least four years. Additionally, if you paid a bona fide independent contractor \$600 or more for services provided during the year, you need to complete IRS Form 1099. A copy of the Form 1099 must be provided to the independent contractor and the IRS.

Federal and state laws establish the criteria for classifying workers as independent contractors. Employers should carefully review and apply appropriate tests before classifying any individual as an independent contractor. Independent contractor relationships should also be reviewed periodically to determine if reclassification is necessary.

Do I Have to Pay My Employees for That?

The FLSA requires employers to pay non-exempt employees for all “hours worked.” This includes not only the time spent actually working, but also time spent on certain other activities. Below, we address several workplace scenarios where pay may be required:

Pre-employment:

Q: My boss wants to start using “working interviews” before hiring new employees. Job candidates would work for a few hours or days in the job to determine whether they are a good fit for the position. Do we have to pay the applicants for their time on the working interview?

A: Yes, these individuals must be paid. Federal, state, and local enforcement agencies will generally consider these individuals employees of your organization and enforce employment laws accordingly. Thus, you must pay these workers at least the minimum wage, withhold taxes, and comply with all other applicable employment laws for the period the individual performs work.

Drug Testing:

Q: After we make a conditional job offer to candidates, we require them to go for pre-employment drug testing. Do I have to pay them for the time they spend taking the test?

A: The FLSA does not require employers to pay candidates for time spent undergoing pre-employment drug testing.

Q: Our company requires a drug test whenever there is a reasonable suspicion that an employee is impaired on the job. Do we have to pay current employees when they go for drug testing?

A: Yes, whenever you impose special tests, requirements, or conditions that your current employees must meet, the time must be paid. This includes time they

spend traveling to and from the tests, waiting for and undergoing these tests, or meeting any other requirements for these tests. Pay is required regardless of whether the tests are scheduled during the employee’s normal working hours or during non-working hours.

Medical Exams:

Q: Early in the workday, an employee was injured on the job and I asked her to go to the hospital for treatment. Does the employee have to be paid for the time she spent seeking treatment?

A: Yes, time spent waiting for and receiving medical attention at the employer’s direction (either on or off the premises) during the employee’s normal working hours must be paid.

“The FLSA requires employers to pay non-exempt employees for all hours worked.”

Security Screenings and “Donning & Doffing”:

Q: We require employees to go through a security screening at the end of their shift. It takes about 15 minutes to process all the workers through the security screening. Do I have to pay the workers for this time?

A: No. The employees don't have to be paid for the time spent in pre-shift or post-shift security screenings. This was the subject of a recent Supreme Court ruling, which explained that an activity would generally be compensable if it is an “integral and indispensable” part of the employee's principal work activities. In [Integrity Staffing Solutions v. Busk](#), the Court ruled unanimously that even though the employer required the security screening, the activity was not an integral and indispensable part of the employees' principal work activities, and therefore was not compensable work time.

Q: We require employees to put on protective equipment when they arrive at work so they can perform their jobs safely. Are we required to pay employees for the time they spend putting on and taking off the equipment?

A: Yes. If the gear is required by law, the employer, or the nature of the work, then the time an employee spends putting on and taking off gear on the employer's premises must be paid because it is considered an integral and indispensable part of the employee's principal work activities. The time must be paid only when the employer or the nature of the job mandates that it take place on the employer's premises. According to the Department of Labor (DOL), if employees have the option and ability to change at home, there is no requirement for the time to be paid, even if workers choose to change at work (see [Wage & Hour Advisory Memo 2006-2](#)).

Rest Breaks:

Q: My company provides employees with two 15-minute rest periods during the workday. These breaks aren't required by any law; we provide them voluntarily for productivity and safety purposes. Do we have to pay employees for these breaks?

A: Under the FLSA, rest breaks of a short duration are generally paid working time. The DOL defines a rest break as any period lasting 20 minutes or less that the employee is allowed to spend away from work. The duration of the break is generally the sole factor used when determining whether pay is required, not the reason for the break (e.g., coffee, snack, or to make a personal phone call).



Q: We provide a 10-minute rest period three times per shift. Some employees are extending these breaks to 20 minutes without authorization. Do I have to pay them for the extra break time?

A: Generally, when employees take unauthorized extensions of rest breaks, the time must be paid if the rest period lasts 20 minutes or less. However, the FLSA permits employers to exclude unauthorized extensions of rest periods from hours worked as long as the employer expressly and clearly advises employees that:

- Breaks may only last for a specified duration (e.g., 10 minutes);
- Unauthorized extensions are in violation of the employer's rules or policy; **and**
- Violations of the employer's policy will be subject to disciplinary action.

Company Parties:

Q: Our company is having a party for our 5th anniversary. Do we have to pay employees for the time they spend at the party?

A: If the party is required or it occurs during work hours, employees must generally be paid for the time they spend at the party.

Company Closings:

Q: I just started my own roofing company. Yesterday, the weather was too cold, so I sent my employees home before they started their workday. Do I have to pay them a certain number of hours?

A: There is no federal requirement for employers to pay non-exempt employees for a minimum number of hours if they report to work when there is no work available. However, some jurisdictions, such as the District of Columbia, California, Massachusetts, New Hampshire, New Jersey, New York, and Rhode Island have report-in pay requirements. Employers should check their applicable state laws to ensure compliance. **Note:** If employees are required to report to work and must stay until a decision about closing is made, they must be paid for the time they spent waiting.

Employers must pay employees for all "hours worked" under federal, state, and local law. Where these laws conflict, the law more generous to the employee typically applies. The Department of Labor has created a fact sheet on hours worked, which can be found [here](#).

10 Mistakes to Avoid When Paying Exempt Employees

Under the FLSA, most employees are classified as non-exempt, unless they meet very specific [salary and duties criteria](#). Even if an employee initially qualifies for exempt status, an employer can later jeopardize this classification with improper pay practices. The following are 10 mistakes to avoid when paying exempt employees:

- 1. Poor performance.** Exempt employees must generally receive their full salary regardless of the quality or quantity of work performed, provided they work any part of the workweek. Employers may not make salary deductions for attendance or performance issues.
- 2. Safety violations.** Employers may require exempt employees to pay safety penalties only if the penalties are imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those related to preventing serious danger in the workplace or to other employees.
- 3. Jury duty.** Employers may not reduce exempt employees' salaries when they serve jury duty, unless it lasts a full workweek. For example, if an exempt employee misses all of Workweek A and only two days of Workweek B, the employer may only reduce the employee's salary for Workweek A. The employee must be paid his or her full salary for Workweek B. **Note:** Employers may reduce exempt employees' salaries to offset jury or witness fees the employee receives.
- 4. Short furloughs.** If your company furloughs, or has employees take a temporary break from service, for less than a full workweek, exempt employees must receive their full salaries as long as they are ready, willing, and able to work.
- 5. Emergency closings.** When the company closes for less than a full workweek, for weather or other emergencies, exempt employees must still receive their full salaries.
- 6. Leaving early/arriving late.** The FLSA prohibits all partial-day deductions

for exempt employees. The only exception is for partial-day absences (e.g., intermittent or reduced schedule leave) under the Family and Medical Leave Act (FMLA).

- 7. Exempt part-timers.** Part-time employees may be classified as exempt but they must still receive a weekly salary of at least \$455 (as well as meet the duties test for the exemption).
- 8. Short-term business changes.** Employers are prohibited from reducing exempt employees' salaries based on short-term, day-to-day, or week-to-week operating requirements of the business. However, employers may change exempt employees' salaries prospectively to reflect long-term business needs, provided such adjustments are not related to the quantity or quality of work performed and the employee still receives at least \$455 per week on a salary basis.



9. Paid sick leave benefits. An employer may reduce exempt employees' salaries for absences of one or more full days due to sickness or disability, but only if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness.

10. Salaried non-exempt. Although non-exempt employees are typically paid on an hourly basis, the FLSA permits employers to pay non-exempt employees on a salary basis. Employers sometimes use the terms "salaried" and "exempt" interchangeably, which can create confusion regarding the employee's status and eligibility for overtime pay. Employees who don't meet applicable exemption tests are entitled to overtime, whether they are paid on an hourly, salary, or some other basis.

Permitted Deductions:

When an employee is classified as exempt, federal law limits salary deductions to the following circumstances:

- Absences of one or more full days for personal reasons other than sickness or disability;
- Absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;
- To offset jury or witness fees, or for military pay;
- For penalties imposed in good faith for infractions of safety rules of major significance;

- For unpaid disciplinary suspensions of one or more full days imposed in good faith for serious misconduct, such as sexual harassment, workplace violence, drug or alcohol use, or for violations of state or federal laws. The suspension must be imposed pursuant to a written policy applicable to all employees;
- In the employee's first or last week of employment if the employee does not work the full week; *or*
- For unpaid leave taken by the employee under the FMLA.

The FLSA does not permit deductions from exempt employees' salaries for any other reason.

Employers could jeopardize employees' exemption status by making improper deductions. Employers should review classifications regularly and ensure all exempt employees receive their full salary for each week in which work is performed.

Exempt to Non-Exempt or Vice Versa: How to Reclassify Employees

From time to time, employers may need to reclassify employees due to changes in job duties and responsibilities. The following are guidelines to consider when reclassifying employees:

Non-Exempt to Exempt:

Most employees are classified as non-exempt. Very few meet the required criteria to be considered exempt. When changing an employee's classification from non-exempt to exempt, employers should first make sure the employee meets all applicable exemption criteria.

- **Apply federal and state tests first.** Ensure the employee qualifies as exempt under federal and applicable state laws. Exempt employees must generally be paid a predetermined salary, regardless of the quantity or quality of work, and must meet the minimum salary and duties requirements for the exemption. If there is any doubt as to whether the employee qualifies for exemption, the employee should remain classified as non-exempt.
- **Communicate the change in advance.** Employers should notify employees of a classification change in advance and should explain how the change will impact the employees. For example, employers should explain that exempt employees will receive set salaries for each week worked and will not be entitled to overtime pay. Employers should also communicate any revised procedures for timekeeping, absences, and deductions in pay.

“Most employees are classified as non-exempt. Very few meet the required criteria to be considered exempt.”

- **Avoid improper deductions.** Employers are limited in the types of deductions they may make from an exempt employee's salary. While employers may deduct from the employee's salary in the first or last week of work if the employee did not work the full week, or when an exempt employee is absent for one or more full days for personal reasons, other deductions are generally prohibited.

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Exempt to Non-Exempt:

The following guidelines assume that the employee was properly classified as exempt initially. For an employee that has been misclassified as exempt, see the *Correcting Previous Misclassifications* section to the right.

- **Review classifications regularly.** Employers should review exempt classifications regularly to determine whether the employee still qualifies for the exemption. A change in an employee's job duties should also trigger a review. If an exemption no longer applies, the employee should be promptly reclassified as non-exempt and paid overtime in accordance with federal and state law.
- **Communicate the change properly.** As with any change in employment status, employers should notify employees in advance and in writing, explaining the impact of the change. Explain the potential benefits of being classified as non-exempt, such as receiving overtime pay whenever the employee works more than 40 hours in a workweek.
- **Be ready for questions.** Employees may have questions about timekeeping, benefits, and other issues related to the new classification. Therefore, when notifying the employee of this change, it is a best practice to provide a contact who can answer any questions the employee may have.

Correcting Previous Misclassifications:

Employers that misclassify employees as exempt may be required to pay back overtime, fines, and damages. To remedy a misclassification, some employers will determine the amount of overtime worked and then pay any back overtime due. If an employee has been misclassified as exempt, the employer should consult legal counsel to discuss how best to address the misclassification.

Note: Many employers don't track the hours of exempt employees, which can make it more difficult to determine how much overtime is due if the employee is later found to be misclassified. For this reason, employers may want to consider tracking exempt employees' hours.

Following the tips provided above can help you through the process of reclassifying employees. When faced with misclassification issues, employers should consider consulting legal counsel for guidance in addressing these situations.

Training Time and Travel Time: When Is Pay Required?

Employers often have questions about when non-exempt employees must be paid for time spent in training and when traveling for business. Below, we discuss several situations where training and travel time are compensable:

Training Time:

In most cases, the FLSA requires employers to pay non-exempt employees for the time they spend in training. In order for training time to be considered unpaid, the training must meet *all* four of the following criteria:

1. It is not during the employee's regular working hours;
2. Attendance is voluntary;
3. It is not directly related to the employee's job; **and**
4. The employee does not perform any productive work during such attendance.

Training is considered directly related to the employee's job if it is designed to help the employee handle his or her current job more effectively as opposed to training the employee for another job (such as a higher level position).

Example 1: A doctor's office requires employees to attend training on patient privacy. The training will take place at the end of the employee's regular shift.

- **Pay required?** Yes. The time spent attending the training must be paid because the training is not voluntary and is related to the employee's job.

Example 2: The owner of a health club is offering a yoga class to clients and

allows employees to attend. While the owner says attendance is voluntary, the supervisor says attendance is required and schedules employees' time off so they can attend.

- **Pay required?** Yes. Since the supervisor made it clear to all employees that their attendance was expected, and the supervisor scheduled employees' time off to facilitate attendance, attendance is not truly voluntary.

Example 3: As part of its benefit program, an employer provides employees tuition assistance so that they can take various courses that do not necessarily relate to their current positions. The program is strictly voluntary and classwork occurs outside of regular working hours. If an employee decides to participate, the employee does not perform any productive work during the course.

- **Pay required?** Pay for the hours spent attending the course would not generally be required because this program would meet all four criteria listed to the left.



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Travel Time:

Whether the time non-exempt employees spend traveling is considered hours worked depends on the type of travel involved. The following address common travel scenarios and related FLSA pay requirements:

Example 1: An employee whose commute is usually 15 minutes each way is given a one-day assignment in another city. The employee's travel to the special assignment takes two hours each way.

- **Pay required?** Yes. If an employee regularly works at a fixed location in one city but is given a special one-day assignment in another city, the time spent traveling to and from that special one-day assignment is considered hours worked. However, you may subtract the time it normally takes the employee to travel to and from his or her regular worksite. In this example, the employee would be entitled to 3.5 hours of paid travel time (4 hours of travel minus 30 minutes of normal commuting time).

Example 2: A service technician spends several hours during their workday traveling from worksite to worksite.

- **Pay required?** Yes. The time employees spend traveling between job sites during the workday is part of their principal activity and is considered hours worked under the FLSA.

Example 3: An employee's regular work hours are 8 a.m. to 5 p.m., Monday through Friday. The employee goes on a business trip that begins with a 9 a.m. flight on a Saturday. The flight takes 3 hours.

- **Pay required?** Yes. Pay is required for the time that cuts across the employee's regular working hours (regardless of the day of the week). In this example, since the flight is at 9 a.m., a time the employee would normally be at work, the travel time on the flight is considered work time. Travel to and from the hotel and airport must also be paid if it falls during the employee's normal hours.

Example 4: An employee's regular commute to and from work was 10 minutes. The company then relocates to a new city that is 30 minutes away from the employee's home.

- **Pay required?** No. When employees engage in ordinary travel from home before their regular workday and return home at the end of the workday, the FLSA generally does not consider this time hours worked and therefore pay is not required. **Note:** Special rules may apply if the company supplies the vehicle in which the employee commutes.



Example 5: An employer asks an employee to pick up office supplies on the way to work.

- **Pay required?** Yes. If you require the employee to perform any work during the commute, the time the employee spends working and the time the employee spends traveling from the beginning of the first work-related duty to the work site (or home) would be considered hours worked. In this example, all of the time, from the beginning of the stop to pick up office supplies until the employee arrives at the work, must be paid.

Example 6: An employer requires telecommuters to come to the office periodically for meetings.

- **Pay required?** Yes. Employees who regularly work from home would be entitled to pay for the time spent traveling to and from the office, minus any time they spend performing personal errands.



Example 7: An employee has gone home after completing a day's work and is subsequently in for an emergency. The employee has to travel a substantial distance.

- **Pay required?** Yes. If an employee, who has gone home after completing a day's work, is subsequently called back and must travel a substantial distance to perform an emergency job for one of the company's customers, then all the time spent in travel (as well as the time spent performing job responsibilities once the employee arrives) is considered working time. Under the FLSA, there is generally no requirement to pay employees for time spent traveling when they are called back to their regular place of work in an emergency outside normal work hours.

Employers should carefully review the FLSA and check state and local laws to ensure that they pay non-exempt employees for all hours worked.

When Weather's Frightful, What Are the Rules for Paying Employees?

Snow storms, hurricanes, and other treacherous conditions can create unsafe travel conditions. When this happens, employees may not be able to report to the worksite and/or employers may be forced to close. The following are some considerations for handling pay related to absences and closures resulting from inclement weather:

- **Non-exempt employees, full day closure.** Generally, whether or not an employee must be paid for full-day closures depends on his or her status as an exempt or non-exempt employee. If non-exempt employees miss work because of inclement weather (either because the company is closed or because they are unable to make it to the business location), there is no requirement to pay them, regardless of the duration of the absence. However, some employers choose to voluntarily pay non-exempt employees if the business is closed due to inclement weather.
- **Exempt employees, full day closure.** Exempt employees must receive their full salary in any workweek in which they perform any work regardless of the number of hours worked. If the business location closes for less than a full workweek, the employer must pay an exempt employee his or her full salary, as long as the employee worked any part of the workweek.
- **Non-exempt employees report to work, then business closes.** Non-exempt employees must be paid for all the time they actually work plus all time they report to work and are required to stay until a decision about closing is made. There is no federal requirement for employers to pay non-exempt employees a minimum number of hours if they report to work when there is no work available due to weather or related circumstances. However, some states do have report-in pay requirements. Employers should check applicable laws to ensure compliance.
- **Employees who cannot report to work, business is open.** If the company remains open during inclement weather and exempt employees fail to report to work, the FLSA permits employers to make salary deductions for absences of one or more full days, because it is considered an absence for personal reasons other than sickness or disability. However, deductions from an exempt employee's pay for partial-day absences are prohibited. Thus, if an exempt employee performs any work from home (e.g., checks work email) or reports to work for an hour and then chooses to go home because of the weather, employers are required to pay the employee his or her full salary for that workweek. Again, if non-exempt employees do not report to work because of inclement weather and do not perform any work from home, there is no requirement to pay them, unless the employer's policy or practice promises otherwise.



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- 5 Exempt to Non-Exempt or Vice Versa: How to Reclassify Employees
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- **Requiring the use of paid time off (PTO).** Under federal law, employers may generally require both non-exempt and exempt employees to use accrued vacation or PTO for the time missed due to inclement weather. However, if exempt employees do not have accrued PTO available, they will still be entitled to their full salary for the workweek as long as they have performed work that week. **Note:** Some states do not permit employers to require the substitution of PTO in these cases. Check your state law to ensure compliance.
- **Offering alternative work arrangements.** As an alternative to employees missing work (because they cannot reach the office or because the office must close), employers may consider offering work-from-home arrangements or allowing non-exempt employees to make up missed hours during the same workweek. When non-exempt employees perform work from home, they should be clearly instructed to record all time spent working, including time spent checking and responding to emails and phone calls.

An important part of being prepared for weather-related emergencies is to address how your company's pay practices may be impacted and to ensure employees are properly compensated.

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