BluejeanCFO Crop Report

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EMPLOYEE-EXEMPT OR NON-EXEMPT

Many small business employers incorrectly (and dangerously) put certain employees on salary as it is eliminates some timekeeping issues and is easy to communicate to the employee when hired. The problem arises in certain instances when the employee leaves or is fired and realizes that they have a viable claim against the employer.

WHAT YOU NEED TO KNOW:

The only employees eligible to be put on salary are those who are employed in an "EXEMPT" position.

Here is the definition of EXEMPT for Federal and CA employment purposes.

EXEMPT employees are not entitled to overtime pay under both Federal and CA law.

An EXEMPT employee must be paid a salary of at least $23,660 for Federal purposes and $45,760 for CA purposes. To be safe, the employer must pay the higher of either the Federal to state standard.

An EXEMPT employee must also meet certain tests regarding their job responsibilities and duties. There are three main categories: EXECUTIVE, PROFESSIONAL AND ADMINISTRATIVE. Here are the general requirements of EXEMPT job responsibilities and duties:

> EXECUTIVE: an employee must have as a primary duty the management of the enterprise or a department or subdivision of the enterprise.
> https://www.dol.gov/whd/overtime/fs17b_executive.pdf
>
> ADMINISTRATIVE: an employee must have a primary duty that requires performing office or non-manual work directly related to the management or general business operations of the employer or its customers. Their primary duty must include the exercise of discretion and independent judgment with respect to significant matters.
> https://www.dol.gov/whd/overtime/fs17c_administrative.pdf
>
> PROFESSIONAL: an employee must have a primary duty that requires knowledge of an advanced type in a field of science or learning customarily acquired by prolonged, specialized and intellectual study or must specialize in a few other highly specialized fields such as teaching, computer analytics or engineering.
> https://www.dol.gov/whd/overtime/fs17d_professional.pdf
> https://www.dol.gov/whd/overtime/fs17e_computer.pdf

Outside Salespersons may also be classified as EXEMPT if their primary job duties meet certain requirements. https://www.dol.gov/whd/overtime/fs17f_outsidesales.pdf

If the employee does not meet on of the EXEMPT criteria, they are considered NON-EXEMPT and are required to be paid overtime(One and one-half of regular hourly rate) when they work more than 40 hours in a given work week (over 8 hours in a given work day in CA).

The failure to properly classify an employee can set an employer up for wage-hour claims, litigation, and substantial state and federal penalties.