

SALARIED vs HOURLY EMPLOYEES

Paying Your Employees: Salary? Exempt? Hourly?

Properly classifying workers as independent contractors or employees is important. For workers classified as employees, whether they are labeled salary or hourly is equally important. In a prior column, independent contractors and employees were defined. This column focuses on whether an employee should be compensated with a salary or an hourly wage.

Employee	Independent Contractor
Continuing Relationship With Employer	Does Same Work For Multiple People
Is Furnished With Tools or Materials Necessary	Has Own Tools and Equipment. Can Hire, Supervise, and Pay Assistants.
Can Quit At Any Time	Can Make a Profit or Suffer a Loss
Must Comply With Instructions On When, Where, and How to Work	Sets Own Schedule and Hours
Is Trained By Employer	Has a Business License

Here is why properly categorizing employees is important. Seventy five percent (75%) of all civil lawsuits relate to employment issues. In these cases, the average settlement is \$40,000. In 10% of the cases, there is a judgment which exceeds \$1,000,000. Of the one million dollars, usually, more than half of it relates to punitive damages. Federal agency enforcement activity is up with the EEOC, NLRB and the Department of Labor.

While the Obama administration was unsuccessful passing most of the employee friendly legislation they attempted, nevertheless they often changed the rules and regulations that support current law to achieve the same effect. Most small business owners do not carry Employment Practices Liability Insurance, though they should as it covers many of these issues. General Liability Insurance usually doesn't cover employment issues.



A salaried employee means that their compensation is offered in a set monthly amount. There are two types of salaried employees; exempt and non-exempt. To properly qualify as an exempt employee, the worker must fall into one of the exempt categories – Executive, Administrative, Professional, Outside Sales or Computer Professional. In the Administrative category, the worker's pay must exceed \$455/week (\$23,665/year) and the employee must spend over 50% of their time directly related to management or general business operations such as the exercise of discretion and independent judgment with respect to matters of significance. You can't deduct pay for missed time from these workers unless the worker misses an entire work week. Also, the fair market value of housing provided can't be included in this amount. Many Community Managers can be properly labeled as exempt salaried employees.

Exempt

- Overtime ineligible
- Paid at least \$455/week or \$23,660/year
- Meets one of the exemption tests
- Paid on a fixed salary basis

Nonexempt

- Overtime eligible
- Paid less than \$455/week or \$23,600/year
- Does not meet any of the exemption tests
- Paid an hourly rate

Non-exempt salaried employees are also paid a monthly amount, however if they work more than 40hrs in a work week (over 8 hours per day in some states) they must be paid time and a half for those hours. By the same token, these employees can have pay deducted during the work week for time any time missed. Their rate for overtime and deductions is calculated by multiplying their monthly rate by 12 then dividing it by 52 weeks and again by 40 hours. These employees are usually clerical personnel and non-professional bookkeeping personnel.

Most other employees should be paid hourly. Hourly employees include blue collar workers and all types of laborers, no matter how skilled. Any worker can be paid hourly even managers themselves. The important thing is to properly account for hours worked and pay overtime at 1.5 times the hourly rate. To help with clarification on how many hours were worked in a week, make a distinct designation as to when your work week begins and ends (i.e. Sunday at 12:01am through Saturday at 12:00 midnight.).



Many employee lawsuits allege they are owed overtime pay. Any non-discretionary bonus pay should be calculated as part of the base pay when figuring overtime pay. Waiting on call as well as traveling to and from the regular work location aren't considered work hours. Community maintenance personnel should generally be paid on an hourly basis.

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