



EXEMPT/NON-EXEMPT STATUS

Municipal Officials Handbook, page 107-108

3.9 COMPENSATION

3.902 Minimum Wages and Hours

Exempt or Non-Exempt Status – Depending upon a variety of factors, some employees are exempt from the overtime pay provisions and some from both the minimum wage and overtime pay provisions. Given this fact, both employers and employees should closely review the exact terms and conditions of a possible exemption in light of the employee's actual duties before assuming that the exemption might apply to the employee. In the end, the final responsibility, and legal liability, of classifying an employee as either exempt or non-exempt rests on the employer.

Overtime Payment – Unless specifically exempt by Montana law, all employees must be paid at least one-and-one-half times the employee's regular rate of pay for all hours worked in excess of 40 hours in a work week. Application of the overtime provisions of subsection (1) to the employment of firefighters and law enforcement officers by the state must be consistent with the Fair Labor Standards Act of 1938, as amended, and consistent with regulations promulgated under the act. Executives, administrative, and professionals who are paid on a salary basis are exempt from overtime. (Salaried workers who do not meet the definition of executive, administrative, or professional must be paid overtime in addition to their salary.) The definitions of these exemptions can be located at this website: <http://erd.dli.mt.gov/labor-standards/wage-and-hourwage-payment-act.html>. Contact Wage and Hour at 406-444-5600 for more information on the exceptions from overtime or the website at: <http://erd.dli.mt.gov/labor-standards/wage-and-hourwage-payment-act/minimum-wagesovertime-exemptions.html>

Avoiding the Salary Trap – Employers must realize that even if they pay an employee a salary versus an hourly wage, they are still subject to the requirements of State and Federal minimum wage and/or overtime laws. Payment of a salary by itself does not exempt an employee unless the business or the individual is exempted from the law.

LGC special note: A “simple” check-list to determine an employee’s exempt or non-exempt status does not exist. The responsibility for determining an employee’s exempt status rests on the employer. Positions with duties that meet certain

FLSA (Fair Labor Standards Act) requirements may be exempted under Executive, Administrative, or Professional criteria. A good reference is the Montana State Department of Labor website, <http://erd.dli.mt.gov/labor-standards/wage-and-hourwage-payment-act.html>. If in doubt, phone Wage and Hour, 406-444-5600, they are very helpful and want to help you make correct determinations.

Executive Criteria include the following:

1. Primary duty consists of the management a department or subdivision thereof; and who
2. Customarily and regularly directs the work of two or more other employees;
and
3. Has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing, and as to the advancement, promotion or any other change of status of other employees; and who
4. Customarily and regularly exercises discretionary powers; and
5. The employee:
 - a. Does not devote more than 20 percent of his/her hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in 1 through 4 above, or
 - b. Is in sole charge of an independent establishment or a physically separated branch establishment; and
6. Is compensated on a salary (not hourly) basis at a rate of not less than \$455 per week.

Administrative Criteria include the following:

1. Primary duty consists of either:
 - a. The performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers, or
 - b. The performance of functions in the administration of the University, or department or subdivision thereof, in work directly related to the academic instruction or training carried on; and
2. Customarily and regularly exercises discretion and independent judgment; and
3.
 - a. Regularly and directly assists an employee employed in a bona fide executive or administrative capacity, or

- b. Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or
 - c. Who executes under only general supervision special assignments and tasks; and
4. Does not devote more than 20 percent of his/her hours worked in the workweek to activities not directly and closely related to the performance of the work described in paragraphs 1 through 3 above; and
 5. Compensated on a salary (not hourly) basis at a rate of not less than \$455 per week.

Professional Criteria include the following:

1. Primary duty consists of the performance of:
 - a. Work requiring knowledge of an advance type in a field of science or learning customarily acquired by an prolonged course of specialized intellectual instruction and study (a general academic education, an apprenticeship, or training in the performance of routine mental, manual, or physical processes does not qualify), or
 - b. Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or
 - c. Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and employed as a teacher at the University; and
2. Work requires the consistent exercise of discretion and judgment in its performance; and
3. Work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
4. Does not devote more than 20 percent of the hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs 1 through 3 above; and
5. Is compensated on a salary (not hourly) basis at a rate of not less than \$455 per week.

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