

  

# Mineral



## Question of the Week

November 6, 2024

### Question

What's the difference between exempt and nonexempt and how do we know which classification to use?

### ANSWER

Exempt and nonexempt are classifications under the Fair Labor Standards Act (FLSA), a federal law requiring that most employees receive at least minimum wage for each hour worked and overtime pay for hours worked over 40 in a workweek. Employees who are entitled to both minimum wage and overtime are called nonexempt, while those who are not entitled to both are called exempt.

Any position can be nonexempt. However, if you want to classify a position as exempt, it needs to qualify for one of the exemptions listed in the FLSA.

The most common exemptions are those for executive, administrative, and professional employees. These are often known as the EAP or [white collar exemptions](#). But to qualify, each employee must pass a three-part test:

1. Duties: The employee must *actually perform* specific tasks and meet specific requirements depending on the exemption they're classified under. Each exemption has its own duties test.
2. Salary level: The employee must make at least a minimum dollar amount per week, as determined by Department of Labor (DOL) rules.
3. Salary basis: The employee must be paid the same amount each week, regardless of hours worked or the quantity or quality of their work. Reducing an exempt employee's pay is only allowed in narrow

circumstances.

If an employee meets all the necessary criteria, they can be properly classified as exempt. If they *don't*, they'll need to be classified as nonexempt and paid at least minimum wage and overtime when applicable.

Note that teachers and practicing doctors and lawyers don't have to pass the salary level and salary basis tests to be classified as exempt. And exempt computer employees (a subset of the professional category) can be paid on an hourly basis, so long as they're paid the applicable hourly minimum, as determined by DOL rules.

*This Q&A does not constitute legal advice and does not address state or local law.*