



## Employment Categories: Exempt vs. Non-exempt



This issue of the HR Connect will provide insight and guidelines related to the government rules and regulations regarding the employment categories of Exempt and Non-exempt employees. During 2009, a number of pastors reviewed issues of employee “Exempt” or “Non-exempt” status with Human Resources, which resulted in reclassifying a number of employees. The problem created by incorrectly classifying a non-exempt employee as exempt is that we may have neglected to pay for hours worked and failed to pay overtime for work beyond 8 hours in a day or 40 hours in a week (as well as additional benefits that may accrue on that additional pay). Also, non-exempt employees are entitled to a minimum hourly wage, plus certain breaks and lunch periods. Failure to give those employees what they are due can result in payment of large penalties by the parish. Now those employees are being treated fairly (and legally).

### Do Not Assume Employees are Exempt

Many employers wrongly assume that employees are exempt if they are paid a salary, or that anyone with the title “manager” is exempt. This is incorrect. It is usually impossible to determine if someone is exempt based simply on their pay or job title.



The Employee Handbook and the Parish Pay Guidelines give examples of “Exempt” employees such as teachers, principals, directors of religious education, pastoral associates, youth ministers, music ministers, operations (business) managers and generally those who engage in certain narrow, pre-defined categories of *independent* professional or artistic work, for example a parish administrator with the authority to determine policy and hire, fire, discipline, evaluate, and supervise other employees. All other employees, including parish and school secretaries and administrative assistants, housekeepers, cooks, maintenance/custodial workers, teacher’s aides, organists and choir singers and bookkeepers are “nonexempt.” We have reviewed the general position descriptions as exempt or non-exempt, but the ultimate classification of an individual depends upon the positions’ actual duties, and the amount of time the employee spends on each duty in the workweek. If any of your employee’s duties are different than the position descriptions in the Parish Pay Guidelines, please contact us for guidance.

### What’s the Difference?

Government labor agencies determine employees’ exempt status by considering each employee’s duties and salary. To be exempt, employees must earn a monthly salary of at least two times the state’s minimum wage (presently \$8/hour) for a full-time employee based on a standard 40-hour workweek. That equates to \$2773 per month or \$33,280 per year. Once that is met, we can look at the duties to confirm they fall into one of the “exempt” categories.

If a specific position is “non-exempt,” that employee must, by law, be paid for each hour worked, plus time-and-a-half of their regular hourly rate for any time worked in excess of eight hours in one day or exceeding 40 hours in a week, or more than seven consecutive days, and must receive at least one-half hour of lunch break (which may be unpaid) for any six-hour shift, plus 15-minute breaks for every three-hour work period. Exempt employees are expected to work as many hours as necessary to do the job. So, they are not entitled to those things, but must be paid for every day on which they do any work.

### **What about My Salaried Employees?**

The method of pay (“salary” or “hourly”) does not determine exempt or nonexempt classification. Non-exempt employees may be paid on either an hourly or salary basis and must be paid at least twice per month. However, paying a non-exempt employee a “salary” does not excuse the duty to pay for every hour worked, plus any additional “overtime.” And the base salary must still meet or exceed minimum wage when divided by the actual number of hours worked. If a non-exempt employee’s hours exceed their “standard work week” their pay must be adjusted manually to reflect the increase. So, in effect, paying a non-exempt employee a “salary” is equivalent to guaranteeing them a certain *minimum* payment for an anticipated work-week, but they must still be paid for any additional time worked.

For example, if a non-exempt position is regularly scheduled to work the same hours each week, whether that be a small number of hours or a full 40 hours in one week, the employer may choose to set up that employee’s payroll record to generate a paycheck for a specific amount each pay period (a “salary”) by establishing that “salary” amount in ADP. This will generate a paycheck in the same amount for each of the 24 pay periods. Establishing an (ADP) payroll schedule as a “salaried” amount does not change the position to an Exempt position. So, if the employee works more than 8 hours in one day or more than 40 hours in a week, the employee must be paid time-and-a-half for the overtime. If this is not clear, please call the Office of Human Resources and we can help review the specific responsibilities and help resolve any confusion or concerns.

The same rule applies to employees paid by “stipends” or on a “per job” basis. A few stipend employees may conceivably fit the criteria to be considered “exempt,” but most stipend employees do not ordinarily make sufficient money to qualify as “exempt” and do not ordinarily work in blocks of time requiring breaks and lunches. In any case, just paying an employee via stipend rather than regularly does not mean that they are “exempt.”

Within the Archdiocese, non-exempt employees who work at more than one location are not to work more than 8 hours in any day or 40 hours in a work week at all locations combined, except with the express prior approval of the employee’s supervisors at each location. If the employee works at more than one location, he/she must notify all locations in advance if approved work at all locations will exceed 8 hours in any day or 40 hours in a week. Failure to do so may result in disciplinary action and should include a letter of warning to the employee. It does not, however, change the legal requirement that the employee must be paid for each hour worked, even if that additional work was without permission.

You are strongly encouraged to conduct a comprehensive review of your wage and hour practices to ensure that your parish/school conforms to the laws and archdiocesan policies regarding Exempt and Non-exempt employees.

We hope you find the above information and recommendations helpful. As always, the HR Team is here to assist. If you have any questions or need additional information or assistance, please contact the Office of Human Resources at (415) 614-5538.