

# EXEMPT vs. NON-EXEMPT



The Fair Labor Standards Act (FLSA) defines the rules and regulations around exempt and non-exempt classifications. To be exempt, a job must meet both requirements of a two-prong test. One prong is based on pay and the other prong is based on duties. The pay test requires employees to meet a predetermined amount of weekly pay set by the FLSA. The duties test requires the job to fall into one of 3 categories: Executive, Administrative or Professional. Don't let the names fool you as they are not necessarily easy to meet. If both tests are not met, then the job is classified and paid as non-exempt.

Human Resources conducts these reviews and determines the exempt or non-exempt status of a job. Employers take a great risk if they misclassify a job as exempt when it does not meet the two tests. A misclassification may cause an employer to have to pay back wages to an employee for unpaid overtime. When in doubt, the best employment action is to classify a position as non-exempt.

## NON-EXEMPT

**PAY:** Paid an hourly pay rate for actual hours worked.

**OVERTIME:** Any hours worked over 40 in a work week is considered overtime and is paid at 1.5 times the employee's hourly pay rate. See Comp Time below.

**FLEX TIME:** May only flex time within the workweek (7 days), which is Thursday through Wednesday at the County.

**TIMEKEEPING:** Needs to record actual hours worked each day on their timecard. For example, if I work 6 hours today and 8 hours tomorrow that is what my timecard should reflect.

**LEAVE:** Vacation, sick, bereavement, or other paid leaves are not included into the calculation of total hours worked and therefore do not impact the calculation of overtime.

**COMP TIME:** Public employers, like the County, can choose to offer Comp Time in lieu of overtime. Comp Time is awarded at 1.5 hours per overtime hour worked, and is placed into a bank for the employee to use later. It is a department decision to offer this or not.

## EXEMPT

**PAY:** Paid a salary each pay period. Actual hours worked does not impact pay.

**OVERTIME:** Not eligible for overtime pay.

**FLEX TIME:** May flex time within the pay period (14 days). For example, may work 35 hours one work week and 45 the next work week. Remember the work week is Thursday through Wednesday.

**TIMEKEEPING:** Despite the number of hours actually worked, pay remains the same. This means if over 80 hours are worked in a pay period, then the amount paid does not change. Any hours worked over 80 hours are not recorded on the time card.

**LEAVE:** It is expected that exempt employees work a minimum of 80 hours in a pay period or use paid leave accruals to make the employee whole to 80 hours.

