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## Salary Non-Exempt Definitions

The following serves as a guideline when defining the difference between a “salaried non-exempt” employee and an “exempt” employee.

### The following is from Chron.com

#### Salaried Nonexempt Employees

Salaried nonexempt employees receive a salary rate for a fixed number of hours. However, when they exceed the fixed number of hours and work more than 40 hours in a week, they receive overtime compensation. The basis of the calculation of their overtime compensation is the equivalent hourly rate the employee earns.

For example, a paralegal that earns \$59,000 per year earns the equivalent of \$28.36 per hour, based on a 40-hour workweek. For a 37 1/2-hour workweek, the \$59,000-a-year employee earns the equivalent of \$30.25 per hour. The overtime rate for salaried nonexempt employees is the same as hourly, nonexempt employees: 1 1/2 times the hourly rate.

Therefore, the paralegal with a 40-hour workweek would earn \$42.54 for every hour that exceeds 40 hours in a week. The paralegal with a 37 1/2-hour week would earn \$30.25 for the 2 1/2 hours up to 40 hours in a week, and then \$45.37 for every hour after 40 in a workweek.

### The following is from: Upcounsel.com

#### Many Employers Have Incorrect Thinking About Non-exempt Salary

It is a common misconception of companies to believe that by having salaried employees, they will not have to bother with tracking time by not having them work over 40 hours. Many employers choose to pay employees on a salary basis because it is easier to estimate what the payroll costs will be from month to month. In their eyes, they see less hassle and less paperwork because they will pay out a set amount on a set pay cycle. Most employees tend to enjoy the stability the salaried wages provide. Additionally, the worker typically has no problem with the arrangement because they are not required to do overtime.

Unfortunately, companies run into problems legally with its non-exempt salaried employees by failing to keep track of hours. While it is true that an employer can pay workers how they choose, FLSA still requires that the company show that employees are at least receiving the minimum wages according to the regulations. Also, that if an employee is non-exempt, he or she must still receive proper overtime pay for the hours worked over 40 hours during a workweek.

*This document is offered for general best practice information only. It does not provide, and is not intended to provide, legal advice.*



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### **An Employer's Responsibilities for Non-exempt Salaried Employees May Be Pitfalls**

There are a few obligations a company must consider to be compliant with the regulations for tracking its non-exempt workers' hours:

- An employer must accurately determine what the non-exempt salaried employee's actual pay rate is per hour so that the company can calculate and track overtime hours appropriately. If an employer pays on a salary per year basis, which is standard for most businesses, the employer can get the hourly rate by reverse engineering from the yearly amount.
- An employer also must be sure that a standard calculation is in place that applies to all salaried employees and everyone that deals with payroll at the organization should be aware of it.
- Employers have to deal with and track absences as well. It would be inclusive of deductions to the weekly salary amount.

Even with deductions for absences, the employer is still obligated to pay overtime when necessary. So, some companies view these administrative responsibilities as a pitfall and begin to question its decision to make some non-exempt employees salaried in the first place.

### **The following is from: SHRM.com**

#### **What is the meaning of "salaried, nonexempt" employee?**

The designation of an employee as "salaried, nonexempt" means that the employer has designated an employee as nonexempt from the federal Fair Labor Standards Act (FLSA), and chooses to pay a weekly salary that equates to at least minimum wage for all hours worked. On a federal level, this designation means the employee is entitled to overtime pay in addition to the salary for work weeks in which his or her time worked exceeds 40 hours. Some state laws may require daily overtime calculations.

Nonexempt employees are often thought of as hourly employees; however, there is no requirement that they be paid on an hourly basis. Under the FLSA, nonexempt employees can be paid hourly, salary, piece rate, commission, etc., as long as their weekly compensation equals at least minimum wage for all hours worked and overtime is paid for hours in excess of 40 in a workweek.

Although the employer pays the salaried, nonexempt employee on a salary basis, it must still track and record actual time worked by this employee, and, if overtime is worked, it must calculate the regular hourly rate on which the overtime rate is based and pay for all overtime worked.