

Practical Application of the Fair Labor Standards Act in the Department of Administration

The federal government regulates workplaces in a number of ways. One of these is through the Department of Labor, which administers the Fair Labor Standards Act. The Fair Labor Standards Act was passed by Congress in the 1930s to define when an employer needed to pay overtime for hours worked. Administratively, employees were divided into two groups – exempt and non-exempt. “Exempt” means that employees are exempt from the provisions of the Act. Non-exempt employees must be paid overtime in accordance with the Act.

How to define whether positions are exempt or non-exempt is the subject of more than one consultant’s hours-long seminar, however there are a few principles. In general, government employees can be exempt for three defined reasons: administrative, professional, or executive.

- *Administrative:* employees must perform office work that directly relates to business operations or policies, and regularly exercise discretion and independent judgment for important decisions.
- *Executive:* employees must manage or supervise at least two people, have authority to hire or fire, and regularly exercise discretionary powers.
- *Professional:* employees must perform work requiring advanced knowledge in a field of learning acquired by prolonged specialized intellectual study, consistently exercise judgment and discretion, and perform predominately intellectual work so varied that the output cannot be standardized by time necessary for accomplishment.

The State of Minnesota has designated classifications as either exempt, non-exempt, or mixed. With mixed classes the human resource office designates each particular position as exempt or non-exempt. If you have questions about whether your position is appropriately designated, please contact Human Resources for a review. We do not wish to make mistakes in designation.

In practical terms, there are a number of implications of the designation. Non-exempt employees:

- Must be paid overtime for any work over 40 hours in a week (Wednesday to Tuesday) period
- Have less flexibility in their work hours and work schedules

Exempt employees:

- Are expected to work more than 40 hours per week without additional remuneration
- Have more flexibility in their work hours and schedules
- Given the discretion and decision-making of their positions and compensation, are considered to be part of department management

It is important that the Department of Administration treat both exempt and non-exempt employees appropriately. We are careful to make sure non-exempt employees are paid for all of the hours they work. Similarly, we try to ensure that all exempt employees are designated properly.

Much as everyone might like it, there is no hybrid of exempt and non-exempt – that is, there is no classification of employees who have significant pay, decision-making responsibility, and high level duties but are only expected to work no more than 40 hours a week. The truth of the matter is we expect our exempt employees to work the hours necessary for the job. We realize that with the volume of work each individual has, this probably doesn't mean finishing all the work every day. It does mean that the individual may spend extra time getting projects done and meeting deadlines, or working later because of a late-arising emergency. Each employee must examine her or his personal values before accepting an exempt job. They should ask themselves, "Am I willing to commit the extra hours required or is my free time and my family time more important to me than the level of the position I am seeking?" There is no wrong answer to that question. The only wrong answer would be accepting an exempt position without intending to fulfill its responsibilities.

At the same time, the Department of Administration does not want to place unreasonable expectations on its exempt employees. If your job consistently requires more than 10 or 15 hours extra time each week, talk frankly to your manager about the volume of work and how it can be diminished to a more reasonable level. There is no advantage to the department or to its employees in demanding unreasonable work production.