

Complying With Wage and Hour Law

Exempt vs. Non-Exempt

What do the terms **exempt** and **non-exempt** mean?

The terms *exempt* and *non-exempt* are used to classify employees for the purposes of applying wage and hour law. An *exempt* employee is not protected by the minimum wage and overtime requirements of the wage and hour laws. A *non-exempt* employee is covered by wage and hour laws that require her/him to be paid at least minimum wage and overtime pay.

How do I know if an employee is **exempt** or **non-exempt**?

Most positions in a child care center are *non-exempt* positions. However, there are exceptions based on specific criteria concerning the employer, job function, and employee education requirements. An employee who is paid a salary (with a bi-weekly or monthly pay period) as opposed to an hourly wage can still be classified as *non-exempt*. How your employees are paid—hourly or salary—does not determine their status as *exempt* or *non-exempt*. Please contact the United States Department of Labor if you have questions concerning *exempt* vs. *non-exempt* employees (see below).

For **non-exempt** employees, an employer **MUST**:

- Pay at least minimum wage. Check current minimum wage with the United States Department of Labor at www.dol.gov/esa/whd/flsa/ or the state Department of Labor www.nclabor.com/wh/wh.htm. Pay the higher of the two rates.
- Establish a specific 7-day workweek of 168 consecutive hours (e.g. Saturday through Friday). Pay overtime (at least 1 ½ times the employee's regular rate of pay, which is an hourly rate) for any time worked in excess of 40 hours during that 7-day period. This applies even when a *non-exempt* employee is "salaried." Remember, classifying employees as "salaried" requires that certain conditions be met. Contact the United States Department of Labor with questions.
- Pay the employee for meetings, training, and education time that is required by the employer or required by the state in order for the center to receive or maintain a license to operate. If such activities cause an employee to exceed 40 hours within the designated workweek, the employee must be paid at 1 ½ times his/her regular rate of pay.
- Pay an employee for any work completed that is related to her/his job. This includes work completed at home, on breaks, or before/after scheduled work hours.

For all employees, regardless of **exempt** or **non-exempt** status, an employer **MUST**:

- Pay employees' wages in full on scheduled paydays.
- Take pay deductions only as allowed or required by law. Deductions that are not required by law must have written authorization from the employee before the payday of the deduction. For questions on promised wages including wage benefits such as vacation pay and sick leave, and deductions from wages, please call the North Carolina Department of Labor's Wage and Hour Bureau at 919-807-2796 (Raleigh) or toll-free (NC only) 1-800-NCLABOR. Web site: www.nclabor.com

For more information or specific questions concerning **exempt vs. non-exempt** employees, please contact:

US Department of Labor, Wage and Hour Division
1-866-4-USWAGE (toll-free)
www.dol.gov/esa/whd

