



G&A's Guide to FLSA Requirements and Common Compliance Violations

Introduction

Minimum wage, salary or hourly, overtime pay – most of us are familiar with these employment terms, but you may not be aware of the hefty and important legislation behind these terms that dictates what you, as a business owner, must do for your employees.

The Fair Labor Standards Act (FLSA), enforced by the U.S. Department of Labor’s Wage and Hour Division (WHD), provides protections for workers and dictates federal standards for the following:

- ▶ Minimum wage
- ▶ Overtime pay
- ▶ Child labor
- ▶ Employer recordkeeping.



Professional services firms that don’t meet these requirements are subject to employee claims, WHD audits, and potential fines or back pay, which can quickly add up. If the WHD finds your conduct willfully violated FLSA, the statutes of limitations can be extended to three years. In plain language, that means you could owe your employee back pay for up to three years – in addition to fines – if you fail to meet FLSA requirements.

G&A Partners created this guide to help professional services businesses better understand, navigate, and comply with the Fair Labor Standards Act (FLSA) requirements.

In the guide, you will find important information on:

- ▶ **Employee Classifications**
- ▶ **Steps to Improve Your FLSA Compliance**
- ▶ **Common Mistakes that Can Lead to FLSA Noncompliance**

1 Employee Classifications

Deciding whether to pay your employees an hourly wage or salary might seem like the smallest of concerns for small and mid-sized business owners who are wearing multiple hats as they manage their professional services company. The fact is, that decision isn't made by you, the business owner, rather it's determined by the FLSA.

"When you think about how small businesses are started, the owner is often an expert in their trade or business, but not necessarily an expert in HR," says Tirsza Elder, G&A's manager of onboarding project managers. "So they may not be aware of the finer points of the FLSA that dictate how to classify an employee, which is determined more from the employee's job description than job title, and impacts how to pay that employee."

The FLSA outlines applicability of wage and hour standards for nonexempt employees and exemptions from these standards. Employees working in roles and performing functions that meet those exemptions, are considered exempt.

So, as a business owner, you aren't determining whether your employees should be paid on an hourly or salary basis. You're determining whether they are classified as nonexempt or exempt.

- ▶ **Employees who are nonexempt** are entitled to the FLSA's protections, such as a minimum wage and overtime pay.
- ▶ **Exempt employees** are paid a standard salary per pay period, regardless of how many, or how few, hours the employee worked.



Minimum Wage, Minimum Salary Thresholds and OT Standards

As of 2023, the U.S. FLSA establishes the following federal standards for covered, nonexempt and exempt workers:

- ▶ Minimum wage rate for nonexempt employees of \$7.25 per hour
- ▶ Overtime pay equal to 1.5 times their regular rate for any hours worked over 40 within a workweek
- ▶ Minimum salary threshold for exempt employees of \$684 per week

In addition, many states and cities/municipalities establish their own minimum wage and minimum salary threshold standards that are often much higher than the federal rates. Business owners must comply with the highest rate applicable to employees. Overtime may also be determined differently for some states, applying after so many hours worked in a day, rather than a week.

Note: The WHD is expected to publish a proposed rule soon that could increase the minimum salary requirements in the near future.



Determining Employee Classifications

Nonexempt Versus Exempt

Knowing whether an employee is exempt or nonexempt under the FLSA can be complex and confusing. But it's also critical to ensuring your payroll is running properly and you're compliant with the act. That's why [G&A Partners](#) carefully analyzes every client's payroll when they first engage us as their professional employer organization (PEO).

The most commonly used **FLSA exemptions** include:

- ▶ Executive
- ▶ Administrative
- ▶ Outside sales
- ▶ Professional
- ▶ Computer employees

To qualify for an exemption, employers must demonstrate that an employee satisfies three tests: two salary-related tests and a duties test.

- ▶ **Salary level test:** Is the employee paid a minimum salary threshold?
- ▶ **Salary basis test:** Does the employee receive a full salary for any week in which the employee performs any work, regardless of the number of days or hours worked?
- ▶ **Duties test:** Do employees perform certain job tasks to be exempt from overtime pay?

If the employee's role does not meet all three tests, then the employee should be classified as nonexempt and is entitled to pay protections of at least the applicable minimum wage rate and overtime pay.

Determine whether your employees qualify for an exemption with our free resource. [Download now.](#)

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Steps to Improving Your FLSA Compliance

Whether you're running a small engineering business with 10 employees or are the CEO of a mid-sized accounting firm, you're responsible for understanding and ensuring your company is compliant with FLSA.

While it's difficult for any business to be 100% compliant all the time, G&A Partners' advisors recommend these steps to help you improve your FLSA compliance:

Begin with education. Failing to know and understand workplace laws and regulations doesn't excuse you from potential claims and fines. Devote time to learning about FLSA and how it impacts your business. [This guide from the Wage and Hour Division](#) is a great resource to bookmark, or [download this PDF version](#) that you can save and print.

How G&A can help: Our experienced HR, payroll, and compliance experts are ready to answer your FLSA questions and can offer guidance on how FLSA may impact your professional services business.

Conduct periodic audits. Your business is growing, which means you're likely creating new positions, expanding your workforce, revising job duties, and promoting employees. Too often, small businesses forget to assess the FLSA implications amidst these changes. For example, how do those new job duties impact the employees' nonexempt status?

How G&A can help: When you begin working with G&A, our onboarding team will review your payroll and job descriptions and identify potential FLSA issues. Then our HR advisors will provide guidance on how to resolve those issues. As your company continues to grow, our advisors can help create job descriptions for new roles and help you stay informed on FLSA-related updates.

Know your state and local employment laws. More and more professional services companies are adopting remote workplaces, which means you may have employees located throughout the country. Since each state, city, and municipality can establish its own labor laws, it's important that you're aware of the requirements of states and cities where your employees work and how each impacts your small to mid-sized business. In most cases in which local, state, and federal labor laws conflict, generally employers should follow the law that provides the highest standard of protection to employees and the strictest standard for employers.

Managing a multistate workforce? [Download our free guide](#) on how to stay compliant when your company is expanding.

How G&A can help: Our HR compliance experts prepare compliance resources for every state to help clients understand various workplace and labor requirements where you have employees working. This is particularly helpful for growing businesses that acquire companies in other states or plan to expand their footprint.

Stay up to date. Labor laws are rapidly changing. Consider that 26 states have or will be raising their minimum wage in 2023, and many jurisdictions have statutory language that cause regular increases as often as every six months. Keeping up with every new requirement is challenging for business owners. Therefore, having a reliable resource to get the latest updates and to help you understand the impacts to your company is essential to maintaining compliance.

How G&A can help: When you outsource your HR with G&A, you get a team of HR and compliance experts on your side. Our compliance team monitors employment laws and regulations regularly and can help you identify the impact to your business and how to implement new requirements.



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Common FLSA Mistakes in Professional Services

At G&A Partners, our goal is to help our clients understand FLSA and how it impacts their business, then provide guidance on what changes we recommend to become FLSA compliant or maintain compliance. This effort starts when you begin working with G&A Partners as your PEO.

Prior to your first payroll with G&A, our onboarding team examines your company's payroll from a compensation and an HR perspective. The team considers state and federal requirements while identifying your areas of risk.

For our professional services clients, G&A's onboarding team looks for red flags common within the industry to identify potential FLSA issues. If the team identifies any, our HR experts dig into the details and offer constructive best practice guidance on how to rectify.

“That’s where G&A really comes into play,” says Elder. “Having the knowledge of what’s appropriate for your particular industry is invaluable, and G&A provides that.”

Because employment laws in the U.S. are constantly evolving, our team recommends that you take a proactive approach to compliance after onboarding ends, including conducting an FLSA audit on a regular basis.

“Many employers don’t realize one wage claim can kick off an audit opportunity for the Department of Labor,” says Monte Farrar, a senior strategic HR advisor at G&A. “The result can be costly fines and back pay, so we remind our clients that job descriptions, salaries, overtime, and classifications should be reviewed regularly.”

G&A's HR advisors often advise professional services organizations on mistakes they've made that could lead to violations. Here are some of the most common:

1. Misclassifying Employees

One of the most common problems G&A's experts help professional services organizations with is misclassification of employees.

► Job titles vs. job descriptions

Job titles have no impact on whether an employee is exempt or nonexempt. Knowing what an employee is actually doing within their job is essential in determining job classifications. One test an employee must meet to determine an exemption is the job duties test.

How G&A can help: Our HR experts recommend evaluating your current job descriptions regularly to keep up with job changes and ensure they are accurate. G&A can help you with this process and can develop job descriptions for new positions or before posting job listings.

Additionally, our compliance team can provide guidance on what meets the job duties test for specific exemptions if you're unsure or need clarification.



▶ Same job title, different classification

Often our HR experts find that a professional services client has multiple employees working under the same job title but classified differently. For example, let's say your marketing firm employs three social media specialists. Two are paid salary (exempt) and one is paid hourly (nonexempt).

How G&A can help: This signals a potential misclassification, so G&A's HR experts will work with you to understand each person's specific job duties and analyze the wages for your two salaried, exempt employees. Possible outcomes include:

- ▶ After reviewing the job descriptions and duties for each person, our experts determine the social media specialist role is nonexempt. Additionally, they determine that each person shares the same duties. Therefore, the two salaried, exempt employees would be reclassified as hourly, nonexempt.
- ▶ During the review, our team learns that one employee has different job duties that pass the professional exemptions test, leading our team to recommend updating the job title/description for that role. If the employee's salary meets the salary level test as well, then the team would recommend classifying the employee as exempt and paying the employee on a salary basis. One social media specialist would remain hourly, nonexempt, and the other salaried, exempt employee would be reclassified as nonexempt.
- ▶ When analyzing payroll, G&A's HR team notices that the salary for the salaried social media specialists falls below the salary level test required for an exemption. The role also does not meet the job duties test. Therefore, our team recommends classifying all three employees as nonexempt and paying them hourly.

FLSA requires nonexempt workers to track their work hours daily and accurately ensure they are paid for all hours worked. When you reclassify workers, it's important to explain these new requirements. G&A's HR advisors can assist you in communicating the right information to help employees smoothly transition to the new pay structure.



► **All employees are paid on salary basis**

Often, business owners pay their employees a salary so they can avoid paying potential overtime, which can be costly. However, FLSA protects nonexempt workers' rights to overtime pay, which is defined as any hours worked over 40 in a 7-day workweek. (Note: Some states may have daily OT requirements.)

That means if you're paying all employees on a salary basis, but they don't qualify for an exemption, then you could be found in violation of FLSA if you're not paying your employees any earned overtime.

How G&A can help: Nonexempt employees can be paid on a salary basis, but they must be paid overtime for any hours worked over 40 in a workweek. They must also track their hours daily so that overtime can be properly calculated. Our HR advisors can provide helpful FLSA guidance and assist you in finding a solution that works for you and your employees but is also FLSA compliant.

► **Employees' pay fails salary level test**

The salary you're paying your employees may not be meeting the salary level test as outlined by FLSA. This is common among professional services companies. For example, technicians may meet the responsibilities in the job duties exemption test but fail the salary level test.

How G&A can help: To be classified as exempt, an employee must meet all three exemptions tests: job duties, salary basis, and salary level. Your G&A team can help identify employees in this situation and then work with you to resolve it. For example, if your employee meets the first two tests but fails to meet the salary minimum, your HR team may recommend increasing the salary for that role to meet the minimum or reclassifying the role as nonexempt and paying on an hourly basis.



► **Independent contractor (1099) versus employee (W-2)**

Hiring contractors to gain expertise for specific tasks is common within the professional services industry. But too often, a business owner will treat the contractor as an employee, yet the contractor won't have access to the FLSA's minimum wage and overtime protections.

How G&A can help: As with classifying employees, the business owner doesn't dictate if a worker is classified as a contractor. It's based on the law's definition of "employee." To avoid the pitfalls of misclassifying workers, we recommend engaging our team of HR compliance professionals who can provide insight and advice based on their deep understanding of employment nuances.

►►► **[Download our free guide on classifying W-2 employees and 1099 independent contractors.](#)**

2. Recordkeeping and Pay for Time Worked

The FLSA outlines requirements for employers on recordkeeping and extends several protections to nonexempt workers, including how they are paid for breaks, meal times, training, overtime, and on-call situations during a 7-day, 40-hour workweek.

► **Failure to pay employees for overtime work**

Some professional services organizations have a company policy that requires employees to seek approval before working overtime. Let's say your employee works five additional hours during the workweek – without approval – to complete a time-sensitive project. You must still pay the employee for those hours at the overtime rate of 1.5 times the employee's regular hourly rate.

How G&A can help: Our HR advisors have extensive experience in human resources and can advise you on how to handle difficult situations. In this scenario, you must pay overtime for the hours worked over 40. However, you can issue the employee a verbal or written warning for violating company policy. It's also advisable for the manager and employee to discuss why the overtime was necessary and determine how to approach similar situations in the future.



▶ **Offering comp time in lieu of OT**

Compensatory time, also referred to as comp time, is typically paid time off given to an employee in lieu of overtime pay. However, the FLSA only permits comp time for government entities and does not allow it in the private sector.

How G&A can help: G&A's HR experts can help you review and update your employee handbook, ensuring you have the proper policies in place to guide your managers and employees on how to handle overtime situations. Additionally, G&A's integrated technology makes it easy to distribute handbooks and collect digital acknowledgements that employees have read and understand the policies.

▶ **Permitting or encouraging off-the-clock work**

Every office has its own culture, and if yours encourages workers to get a little extra work done after hours or during a lunch break, you are exposing your company to potential FLSA issues. The FLSA dictates that nonexempt workers must be paid for all work performed, even after their regular hours or during meal breaks.

How G&A can help: Having a complete understanding of FLSA and how it impacts your business is an important step to compliance. Our compliance team and HR advisors know the ins and outs of FLSA and can advise you on best practices that will help you stay compliant.

▶ **Failure to maintain complete time and attendance records**

The FLSA requires businesses to keep complete records of their employees' wages and time. If you're only recording some of the required information or are not maintaining any records, you could be penalized by the Department of Labor.

How G&A can help: Maintaining complete and accurate records is easier when you utilize G&A's integrated technology. Our [time and attendance system](#) replaces tedious manual time entry and reporting processes with automated timesheets and overtime tracking.

