

FLSA RISK ASSESSMENT CHART



When an employer misclassifies an employee as “exempt,” the risk of an employment-related lawsuit increases.

Determining whether a position should or can be classified exempt is a complicated process that must be applied to each individual position. While no concrete test exists to determine whether an exemption is met, this tool can help you assess the risk involved when classifying an employee as “exempt.”

To weigh the risk, answer the statements in each column as true or false. Total the number of “true” statements in the column and compare to the meter near the bottom of the column.

Does the position qualify for the ministerial exception?	Is the position specifically exempted from FLSA requirements?	Does the position fail to require regular and recurrent participation in interstate commerce?	Does this position meet the Salaried Level test AND:
<p>The individual was hired based “largely on religious criteria.”</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The individual is a teacher, academic advisor, or admissions counselor employed by an elementary school, secondary school, or institution of higher education.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position does not require the employee to make interstate phone calls on at least a weekly basis.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position meets the “executive” exemption qualifications under FLSA regulations.</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p>The ministry authorizes the individual to perform ceremonies (baptism, weddings, communion) of the church.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The individual is a preschool or kindergarten teacher whose primary duty is teaching, not caring for the physical needs of children.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position does not require regular travel outside of the state.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position meets the “administrative” exemption qualifications under FLSA regulations.</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p>The ministry holds the individual out as a member of clergy (more than just title).</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The employee serves in a medical position requiring a valid medical license or certificate.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position does not require the employee to send or receive interstate mail at least weekly.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position meets the “learned professional” exemption qualifications under FLSA regulations.</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p>The individual regularly engages in religious or ecclesiastical activities and “attends to the religious needs of the faithful” as part of their job function.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position pays a total annual compensation of \$134,004 and primary duty is exempt-level work.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position does not require the employee to order materials from another state regularly.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position meets the “creative professional” exemption qualifications under FLSA regulations.</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p>The position requires the individual complete a formal process such as ordination, licensure, divinity degree, etc. in order to perform the position.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position requires either a CPA or a JD (law degree) to perform the job.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position does not require the employee to interact with people in other states via the internet on at least a weekly basis.</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>The position meets the “computer employee” exemption qualifications under FLSA regulations.</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p>SCORE RISK</p> <p>0-1 True = Higher 2-3 True = Moderate 4-5 True = Lower</p>	<p>SCORE RISK</p> <p>0 True = Higher 1-5 True = Lower</p>	<p>SCORE RISK</p> <p>0-1 True = Higher 2-3 True = Moderate 4-5 True = Lower</p>	<p>SCORE RISK</p> <p>0 True = Higher 1-5 True = Lower</p>
<p>If you determine the position meets the ministerial exception, the FLSA would not apply.</p>	<p>If you determine that the position qualifies under at least one of the above tests, the FLSA likely would not apply.</p>	<p>If you determine that the position does not require regular and recurrent participation in commerce, the FLSA likely would not apply.</p>	<p>If you determine that the position qualifies for one of the white-collar exemptions, and the employee exceeds the salary level, the FLSA likely would not apply.</p>

If a position does not pass any of the above assessments, it likely should be classified as non-exempt and the FLSA rules should be applied. When in doubt, it’s best to err on the side of “non-exempt.” Consult a locally licensed attorney before classifying an employee as “exempt.”