

Employee Wage Status: Exempt or Nonexempt

Contributed by AIA Alliances and AIA Knowledge Resources Staff

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SUMMARY

A firm's decision to declare an employee exempt or nonexempt is a decision that is predetermined by the law. A few online resources can help employers correctly identify an employee's wage status.

CONSULT YOUR ATTORNEY

The information below should not be regarded as a substitute for legal advice. Readers are strongly advised to consult an attorney for advice regarding any matter related to the wage status of employees under federal or state law.

LEGAL STANDARDS APPLY

Many employers and employees of all types assume that the wage status of employees can be established by company policy or by negotiated agreement, and that as long as the parties mutually agree that the terms are logical and fair, the arrangement is lawful.

Employers are strongly advised to discard these assumptions. The wage status of employees is a matter of law at both the state and federal levels. Your personal standard of fairness may or may not conform to the law.

PROFESSIONAL SERVICE FIRMS

Because the nature of work can vary tremendously throughout the economy, a single set of criteria cannot be applied uniformly to all types of employees and employment situations. Determining the wage status for employees of professional service firms can sometimes be difficult.

Government agencies use a number of criteria to determine whether an employee is exempt or nonexempt, including the nature of the employee's duties and qualifications, whether the employee exercises independent judgment, whether the employee is a member of a learned profession, and whether the employee is a bona fide professional.

RELEVANT RESOURCES

The following online resources of the U.S. Department of Labor are listed to help you comply with the law and determining the wage status for your employees. Read these resources and consult your attorney to best determine how the provisions of the law apply to your firm.

BONA FIDE PROFESSIONALS

The job descriptions for employees of professional service firms, in order to be classified as exempt, must meet the criteria for a "bona fide professional" as defined by the U.S. Department of Labor at

www.dol.gov/dol/allcfr/ESA/Title_29/Part_541/29CFR541.3.htm.

LEARNED PROFESSIONS

The site listed above makes reference to the "learned professions" as a subset of "bona fide professionals." The definition of "learned professions" can be found at

www.dol.gov/dol/allcfr/ESA/Title_29/Part_541/29CFR541.301.htm.

DUTIES AND QUALIFICATIONS

Not all professional/technical employees of professional service firms are exempt. The exemption depends on the duties and qualifications of the individual employee. Information about the relationship between duties, qualifications, and wage status can be found at

www.dol.gov/dol/allcfr/ESA/Title_29/Part_541/29CFR541.308.htm.

Whether an employee exercises independent judgment is a principal criterion in determining an employee's wage status. Independent judgment is defined at

www.dol.gov/dol/allcfr/ESA/Title_29/Part_541/29CFR541.305.htm.

RESOURCES

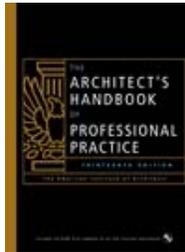
More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 07.03.01 Definition of Architect Positions
- 07.04.02 Employment Status: Independent Contractor -- Yes or No?
- 07.01.03 Maintaining Personnel Files

For More Information on This Topic

See “Recruiting and Hiring” by Laurie Dreyer-Hadley and Kathleen C. Maurel, Assoc. AIA, *The Architect’s Handbook of Professional Practice*, 13th edition, Chapter 9, page 229.



See also the 14th edition of the *Handbook*, which can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by email at bookstore@aia.org.



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Keywords

- Practice
- Personnel management
- Employment