

## Can Paying a Salary Help You Avoid Overtime? The Answer May Surprise You.

by Rebecca Boartfield

“To avoid overtime, I’m just going to pay everyone a salary.”

We hear this phrase, or other iterations like it, a lot. And we’d love to say it’s that easy—so many headaches and problems would disappear if we could. But government regulations make it more complicated. Unfortunately, paying an employee a salary does not solve the overtime conundrum.

If you read no further in this article, know this: salary compensation is just a method of pay. It holds no other power as it relates to tracking employee hours, paying overtime, or having to adhere to other wage and hour laws that may be applicable.

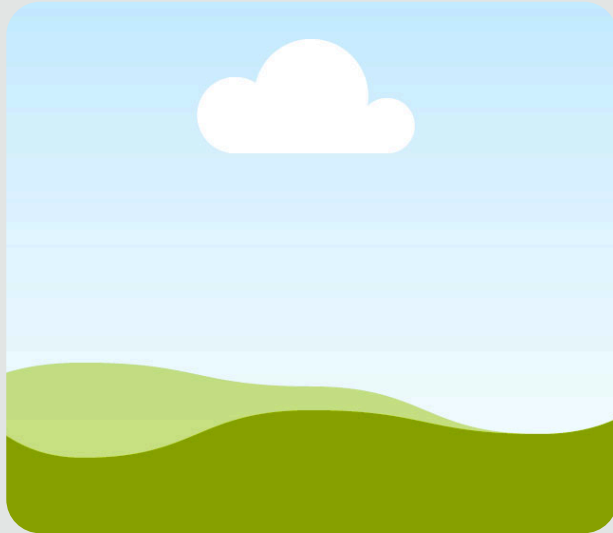
The question of whether it is better to pay employees a salary depends on myriad factors and hinges on your specific circumstances. This may vary between positions as well. Some could be salaried, and others not. There is no one right method for compensating employees so long as the rules, when applicable, are followed. The bottom line is this: overtime pay may still be required, regardless of the method you choose.

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Before you make any decisions or changes, let's take a closer look at compensation methods, some of the rules, how that may or may not affect overtime requirements, and what might be best for you.

### Compensation Methods

Here are the compensation method choices:

- **Hourly Compensation:** This method simply pays employees for each hour or portion thereof worked.
- **Salary Compensation:** Payment on a salary basis means that an employee receives a predetermined amount of compensation on a regular basis, such as weekly, biweekly, or monthly. This is usually regardless of the number of hours worked by the employee each week, or each pay period.
- **Piece Rate:** This is a system where an employee is paid a fixed amount for each unit produced or action completed. For example, a hygienist who is paid a certain amount
- **Commission:** This is a system where an employee is paid a

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amount for each until produced or action completed. For example, a hygienist who is paid a certain amount per cleaning.

- **Daily Rate:** Employees are paid on a per-day basis as opposed to being paid hourly or salary. This is a flat rate for the entire day. For example, \$400.00 per day.

Regardless of the method you choose, it's important to understand how overtime rules apply to each. To be clear, none of the above changes any overtime requirements. These methods simply change how an employee is compensated, which will only impact how overtime is calculated if it is worked.

### Overtime Triggers

At the federal level, the overtime threshold is 40 hours per workweek. Any hours over 40 in a workweek must be paid at time-and-a-half.

Some states, like California, have daily overtime triggers in addition to the federal weekly requirement. For example, overtime may be triggered for all hours worked over 8 in a day. Note: California has a complex set of overtime requirements, which includes double time in some cases. A closer review of those laws is required if you operate there.

When state and federal rules differ, the law most favorable to the employee applies.

Wherever you are, it is imperative for all employers to know and understand

their applicable overtime triggers and comply at all times.

Knowing the overtime threshold is only half the battle; whether an employee is exempt or non-exempt determines if overtime pay applies.

### Employee Classifications

The sole factor determining whether overtime is applied is employee classification. We don't mean full-time or part-time classification. We're talking about government classifications under the Fair Labor Standards Act (FLSA).

According to the FLSA, employees fall into one of two classifications: exempt or non-exempt. Exempt employees are excluded from having to be paid overtime, while non-exempt employees must be paid overtime. Being "salaried" does not determine overtime eligibility, and, as described above, the method of compensation does not determine whether an employee is exempt or non-exempt.

Given that exempt employees do not receive overtime pay—they are

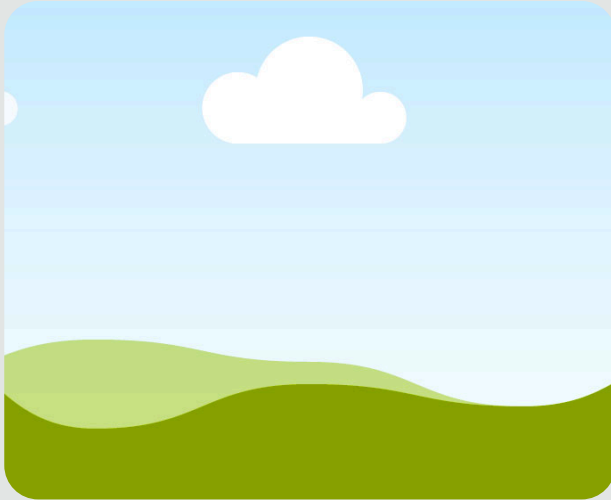
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exempt from the overtime pay requirements and calculations. Don't you wish you could arbitrarily make every employee exempt? Again, we wish it were that easy.

To qualify for exemption status, an employee's job must meet the specific salary and work duty criteria set forth by the FLSA and other state laws. All of the FLSA's requirements for exempt status are extensive, specific, and stringent, and cannot be covered here in detail. The key takeaway is that classifying an employee as exempt is not an arbitrary decision.

By default, all employees are assumed to be non-exempt. In other words, they are not exempt from the overtime pay requirements and calculations. Non-exempt employees are to receive overtime pay, regardless of their method of compensation, whenever their hours exceed the overtime threshold. The non-exempt classification applies unless the employer can show that the employee's salary and work duties meet the criteria for being exempt.

There is no rule that says non-exempt employees have to be paid a certain way; therefore, they can be paid a salary. They can also receive their compensation in the form of a daily rate, an hourly wage, piece rate, or commission. So long as you are paying a non-exempt employee at least minimum wage for all hours worked, as well as overtime when incurred, you may compensate them with a method of your choosing.

Finally, not all non-exempt employees have to be compensated

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in the same manner. You can pay some employees hourly, some daily, or some a salary, depending on what you think will work best for those positions and your business.

### So...Does Salary Pay Avoid Overtime

If you've read this far, you know it doesn't. Maybe now the question is: what is the best method for paying a non-exempt employee?

For non-exempt employees, we do recommend hourly pay because it is simple, straightforward, and easy to understand and administer. The other compensation methods, while valid, do come with more complications to manage.

That being said, paying a non-exempt employee a salary often does have a psychological value for the employee. And it can be administratively easy if overtime isn't worked and time off is minimal. This will depend on the employee—their attitude, motivation, general nature, etc. This may drive one employee to be more successful, while another may abuse the privilege.

If you decide to pay your non-exempt employees a salary, follow these guidelines:

- Be clear how many hours per week the salary is based upon. It can be any number up to 40 hours. The weekly hours must closely match what they're expected to work. You may not list the hours as 40 per week if, in reality, the individual

will only be scheduled for 32 hours a week on a regular basis.

- You can dock the employee's pay for time not worked. Make it clear how you'll handle this when the employee works fewer hours than the defined schedule. In other words, what will you do if you define the salary as 34 hours per week and the employee only works 28 hours unexpectedly?
- Know that if the employee works more than the defined schedule, you must increase their pay. In other words, a salary based on 34 hours per week must be increased if the employee works 38 hours. A poorly defined salary will result in this happening frequently, which is not advised. Audit your employee's hours to determine the most ideal number of hours to base the salary on.
- Don't forget that any hours over applicable daily and/or weekly overtime triggers must be paid at time-and-a-half (or double time, as the case may be in CA for certain situations).
- Once the above is established, put it in writing to ensure everyone is on the same page.

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## Key Takeaways

- Salary alone does not prevent overtime.
- Overtime eligibility depends on employee classification, not pay method.
- Hourly pay is simplest for non-exempt employees.

## Conclusion

It's time to bust this myth once and for all. Spread the word—tell your colleagues. Avoiding overtime pay is not as simple as “just pay everyone a salary.” Unless an employee qualifies as exempt—a rare scenario—there's no quick fix. Look for other ways to manage or prevent overtime responsibly.

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