

Employee Classification Checklist

Use this checklist to ensure your employees are correctly classified under the Fair Labor Standards Act (FLSA) and relevant state laws. Misclassification can lead to costly penalties, so it's critical to get it right.

Step 1: Determine Employment Type

Employee

- The worker performs tasks as directed by your company.
- You control their schedule, tools, and work process.

Independent Contractor

- The worker controls how and when the work is done.
- They supply their own tools and resources.
- They offer services to multiple clients or the public.

Step 2: Exempt vs. Non-Exempt Status (For Employees Only)

Exempt (e.g., Restaurant Manager)

- The worker meets **all three** criteria below:
 - a. Paid a salary, not hourly.
 - b. Earns at least \$684 per week (federal threshold).
 - c. Performs duties that fall into one of these categories:
 - **Executive:** Supervises at least two employees and has hiring/firing authority.

- **Administrative:** Performs office or non-manual work related to management policies.
- **Professional:** Requires advanced knowledge in a field like law, science, or education.

Non-Exempt (e.g., Server, Dishwasher, Cook, etc.)

- Does not meet one or more of the above criteria.
- Entitled to overtime pay for hours worked over 40 in a workweek (or other state-specific rules).

Step 3: Review Key Factors for Classification

Control Over Work

- Do you dictate how the worker performs their job?
- Do you provide specific instructions, tools, or training?

Financial Dependence

- Is the worker dependent on your company for their income?
- Do they bear any financial risk or opportunity for profit/loss?

Permanency of Relationship

- Does the worker have an ongoing relationship with your company?

Step 4: Confirm Compliance with Local Laws

State-Specific Requirements

- Check State-specific thresholds and wage laws. (States vary)
- Ensure tipped employees comply with state and federal tip pooling and minimum wage rules.

Child Labor Laws

- Verify hours and job duties for workers under 18.

Step 5: Documentation

Written Agreements

- Have contracts or offer letters that specify the worker's classification.

Recordkeeping

- Maintain records of wages, hours, and work conditions.
- Ensure documentation supports the classification (e.g., proof of salary or independent work).

Step 6: Conduct Regular Audits

Annual Classification Review

- Reassess classifications for any changes in duties or laws.

Correct Misclassifications Promptly

- If errors are found, update records and compensate workers for any missed overtime or wages.

Need Help?

If you're unsure about your classifications, we offer a **Free Employee Classification Consultation** to help you stay compliant.

Legal Disclaimer

This document is for informational purposes only and does not constitute legal advice. While every effort has been made to ensure the accuracy of the information provided, labor laws and regulations are subject to change and may vary depending on location and individual circumstances.

Employers and business owners are encouraged to consult with a qualified attorney or HR professional to address specific compliance needs and ensure adherence to all applicable federal, state, and local laws. The authors and distributors of this document assume no liability for any errors, omissions, or outcomes resulting from the use of this information.

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