

From: [Robert Eschenfelder](#)
To: [Belk, Clint](#); [Powers, Megan](#)
Subject: RE: Legal Opinion on FLSA HR Study Classifications
Date: Thursday, September 18, 2025 5:32:57 PM
Attachments: [image002.png](#)
[image005.png](#)

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Acting Manager Belk,

In response to your question below concerning “consequences” for violation of the FLSA (in this case by misclassifying an employee as overtime exempt when the employee does not meet an exemption category), there are a variety of serious consequences.

First, the United States Department of Labor's Wage and Hour Division (Wage and Hour) enforces the FLSA for employees of private businesses and state and local governments. Wage and Hour's enforcement of the FLSA is done by investigators stationed across the United States. As Wage and Hour's authorized representatives, they conduct investigations and gather data on wages, hours worked and other employment conditions or practices, in order to determine compliance with the law.

The Wage and Hour Division conducts investigations for a number of reasons. Many investigations are initiated by complaints. All complaints are confidential; the name of the complainant and the nature of the complaint are not disclosed. In my experience, an employer does not want a Wage and Hour investigator appearing. These investigators wield great authority to obtain documents, and when they arrive, they do not just focus on the specific complaint made, they do deep dives into the employer and often find added violations (such as failure to comply with the FLSA's record-keeping requirements). Ultimately, if Wage and Hour determines it wants to make an example of the employer, it will have DOL lawyers file suit against the employer in the name of the government.

In addition to Wage and Hour's ability to investigate and DOL's ability to sue to enforce as an agency, the FLSA grants each employee (current and former) the right to file a civil suit in federal or state court for FLSA violations. If the employee prevails in any way, he or she gets all their attorney fees paid.

In terms of the financial exposure, it can be expensive. Employers who are found to have failed to pay overtime to an employee who was misclassified must pay:

- All back wages
- An equal amount of back wages as “liquidated damages”
- Attorney fees and costs

In addition, if the court finds the violation to be “repeated”, there is a civil penalty of \$1,000 *for each violation*. If the violation is found to be “willful” (in other words, the employer knew the employee was misclassified but did not correct the misclassification), the civil penalty is \$10,000 *for each violation*.

In terms of how far back you go, a 2-year statute of limitations applies to the recovery of back pay, except in the case of a willful violation, in which case a 3-year statute applies. In other words, unless the violations are willful, back wages may be recovered within two years of when the violations occurred.

One of the significant problems with misclassification cases is that since the employer was not properly classifying the employee, it often has no records of the actual hours the employee worked year in and year out. That, then, results in a separate records violation, but it also greatly undermines the employer's ability to refute an employee who comes forward with their own records of when they worked (often these come in the form of notebooks the employee says he or she was keeping all along). And so unless there are years' worth of time-stamped video of the employee coming and going the employer can turn to, how does the employer refute the employee's allegations they worked late each day? And, of course, since employers treat exempt employees as being able to respond to emails or calls or perform other work on nights and weekends from home, those actions, too, would become compensable hours worked and often the employee has the emails and text messages showing the after-hours work.

So, in sum, I cannot impress upon the City enough that it should take great care to ensure that it is not categorizing anyone as FLSA exempt unless the City is absolutely sure the employee fits into one of the exemption categories I reviewed for you yesterday. Again, as to any given employee, I'm happy to do the detailed examination if desired.

Regards,
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From: Belk, Clint <cbelk@madeirabeachfl.gov>

Sent: Thursday, September 18, 2025 5:05 PM

To: Robert Eschenfelder <Rob@cityattorneys.legal>; Powers, Megan <mpowers@madeirabeachfl.gov>

Subject: RE: Legal Opinion on FLSA HR Study Classifications

Rob,

If we were to place employees in an exempt status outside of the FLSA requirements what, if any issues could the city be open to? I am making an agenda item for the workshop on 9/24 to discuss with the commission.

Clint Belk, B.S., CFO

Fire Chief

Madeira Beach Fire Department

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Madeira Beach, FL 33708

From: Robert Eschenfelder <Rob@cityattorneys.legal>

Sent: Thursday, September 18, 2025 12:35 PM

To: Powers, Megan <MPowers@madeirabeachfl.gov>

Cc: Belk, Clint <cbelk@madeirabeachfl.gov>

Subject: RE: Legal Opinion on FLSA HR Study Classifications

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Great, thanks.

Regards,

Robert M. Eschenfelder, Esquire

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From: Powers, Megan <MPowers@madeirabeachfl.gov>
Sent: Thursday, September 18, 2025 12:10 PM
To: Robert Eschenfelder <Rob@cityattorneys.legal>
Cc: Belk, Clint <cbelk@madeirabeachfl.gov>
Subject: RE: Legal Opinion on FLSA HR Study Classifications

Hi Rob,

Thank you for your email, I will speak with the team and get back to you if we have any additional questions.

Regards,

Megan Powers

Assistant to the City Manager

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From: Robert Eschenfelder <Rob@cityattorneys.legal>
Sent: Wednesday, September 17, 2025 4:36 PM
To: Powers, Megan <MPowers@madeirabeachfl.gov>
Cc: Belk, Clint <cbelk@madeirabeachfl.gov>
Subject: RE: Legal Opinion on FLSA HR Study Classifications

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Ms. Powers,

Thanks for your question below indicating you and Chief Belk desire some clarification around the FLSA's exemption categories.

As we know, the FLSA generally requires employees be paid a minimum wage, and that they receive time and one half for all hours worked over 40 in a work week.

However, § 13(a)(1) of the Act provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees.

To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$684 per week.

It is vitally important to understand that job titles do not determine exempt status. An employee's title and formal job description are not dispositive of the nature of the employee's primary duty for purposes of the administrative exemption. Instead, that inquiry demands an intensive factual assessment focused on "evidence regarding the actual day-to-day activities of the employee rather than more general job descriptions contained in ... position descriptions." *Erdemir v. Allstate Marble & Granite, Kitchens & Baths Inc.*, 704 F. Supp. 3d 337, 365 (E.D.N.Y. 2023) (internal quotation marks omitted); see *Coker v. Goldberg & Assocs. P.C.*, No. 21 Civ. 1803 (ER), 2022 WL 874719, at *3 (S.D.N.Y. Mar. 24, 2022) (noting that "the exempt or nonexempt status of an employee cannot be assessed from the employee's title alone").

In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations. I will review each of the exemptions (except for outside sales) below:

Executive Exemption

To qualify for the executive employee exemption, all the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$684 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more

other full-time employees or their equivalent; and

- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Your inquiry only mentions two positions: Grounds Maintenance Supervisor and Executive Assistants. Since neither of these positions have a primary duty of managing the City, or a City department, the Executive Exemption would not apply to those positions. Also, Executive Assistants do not direct the work of two or more subordinate employees, and so they would fail for that element as well.

Administrative Exemptions

To qualify for the administrative employee exemption, all the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

The federal regulations adopted by the Labor Department to implement the FLSA provide additional detail regarding these Administrative Exemption elements. As to the second requirement, the regulations explain that "[t]he phrase 'directly related to the management or general business operations' refers to the type of work performed by the employee." 29 C.F.R. § 541.201(a).

Thus, to meet that requirement "an employee must perform work directly related to assisting with the running or servicing of the business." *Id.* The regulations provide the following non-exhaustive list of functions that are considered to be "directly related to management or general business operations":

work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities.

Id. § 541.201(b).

The third element of the Administrative Exemption provides that the "employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance." *Id.* § 541.202(a). As a general matter, "the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered." *Id.* And "[t]he term 'matters of significance' refers to the level of importance or consequence of the work performed." *Id.*

The regulations provide additional guidance concerning the level of discretion and independent judgment that an employee must exercise to fall within the exemption. At the very least, that requirement “implies that the employee has authority to make an independent choice, free from immediate direction or supervision.” Id. § 541.202(c). An employee can still exercise discretion and independent judgment, however, “even if their decisions or recommendations are reviewed at a higher level.” Id. Accordingly, the requirement of discretion and independent judgment “does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review.” Id. Thus, “decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action,” and “[t]he fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment.” Id.

The regulation directs courts to consider the following non-exhaustive list of factors in determining whether an employee exercises discretion and independent judgment:

whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

Id. § 541.202(b).

As noted earlier, you cannot just look at the title Grounds Maintenance Supervisor or Executive Assistant and decide if the position is exempt or not. Rather, you have to first look at the detailed job description of such positions, and then also you need to HONESTLY look at what the employee ACTUALLY does day in and day out. For instance, not all “executive assistants” are created equally. Some are allowed to do significant work such as managing the schedule of a top executive, using company credit card to acquire services for the executive, training new executive office personnel, directly interacting with legal or accounting professionals, etc. Other executive assistants do little more than type memos and letters for their boss, open the mail, and receive phone calls and record messages.

Same with front line supervisors. Some do very little supervising (so-called “working supervisors”) and are more akin to a “lead worker.” Other supervisors may indeed spend most of their time scheduling crews, administering HR policies, drafting evaluations for the chain of command to review, and being part of the interviewing and hiring process. Again, it is what the position actually does that must be examined.

To be clear, though, to the extent we're talking about your role, at least under the prior manager, you were assigned to perform functions which clearly would satisfy the Administrative Exemption.

Professional Exemption

Here, we're talking about doctors, Engineers, lawyers, professors. To qualify for the learned professional employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the creative professional employee exemption (actors/performers/artists/directors), all the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

The only people in City employment who would fall into this exemption would be if you had an in-house City Engineer (who's minimum qualifications required the advanced degree and professional license).

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated either on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - A combination of the aforementioned duties, the performance of which requires

the same level of skills.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more (which must include at least \$684 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

There are a ton of cases out there parsing how these exemptions apply in a huge number of different jobs. Again it is a very fact-driven inquiry. With no additional facts to go on, I hope the above analysis has at least provided the basic background for you and Acting Manager Belk to go on when considering these questions. If you get hung up on any particular position and want a deeper analysis, I would need the job description and then to discuss with you or the director what the person actually does so I can examine the caselaw.

Regards,
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From: Powers, Megan <MPowers@madeirabeachfl.gov>

Sent: Wednesday, September 17, 2025 3:23 PM

To: Robert Eschenfelder <Rob@cityattorneys.legal>

Subject: Legal Opinion on FLSA HR Study Classifications

Hi Rob,

I hope all is well, it's been a while! We are finally almost done with the HR study but there was a point that was brought up in our staff meeting.

We have some conflicting views on what makes an employee exempt vs non-exempt. Positions like Grounds Maintenance Supervisor and Executive Assistants are being brought up as should not be exempt since they do not hire/fire.

Now that Robin is gone Acting City Manager Chief Belk would like to see what your legal opinion is.

Thanks!

Megan Powers

Assistant to the City Manager

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