

# PUBLICATION

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## How to Incentivize an Employee Exempt Under the White Collar Exemptions

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Under the Fair Labor Standards Act (FLSA), certain employees can be exempt from overtime if they meet the "white collar exemptions" – the bona fide executive, administrative, professional, certain computer and outside sales employees. To meet these exemptions, the employee has to perform certain job duties and generally must be paid on a salary basis of at least \$455 per week. To meet the salary basis requirement, the employee must receive a predetermined amount of compensation that cannot be reduced because of variations in the quality or quantity of work performed.

Most of the time, the employees who meet these exemptions are the highly-motivated go-getters of the company. These employees work long hours and give 110 percent, proud of their exempt status. But what happens if they do not? What happens if the exempt manager leaves early every Friday? What happens when the company needs an exempt employee to work additional hours or take on additional duties? What can the company do without jeopardizing the exempt status? Here are a few suggestions:

1. Follow payroll practices that do not violate the salary basis test. For example, companies can, and should, require exempt employees to keep track of and record their hours worked. Similarly, companies can require exempt employees to work a specified schedule, and companies can implement bona fide, across-the-board schedule changes. Companies can also take deductions from exempt employees' accrued leave accounts (that manager leaving at 1 p.m. every Friday will probably reconsider if he has to use vacation time to cover his time until 5 p.m.).
2. Evaluate exempt employees. White-collar exempt employees are the managers and leaders of the company. The example they set by attendance and compliance with company policies set the tone and directly contribute to (or detract from) the morale of other employees. As such, compliance with timekeeping requirements and attendance should be factors in evaluations of all employees, especially exempt employees.
3. Take disciplinary action, if necessary. If the exempt employee fails to cooperate with a requirement to record work hours or work his/her set schedule, the company has a bad employee (exempt or not), and the company should take appropriate disciplinary action. Remember, however, to separate discipline and salary. Use counseling sessions, write-ups, etc. Do NOT dock an exempt employee's salary as punishment (the only two exceptions being a penalty imposed in good faith for violating safety rules of "major significance" and an unpaid suspension of one or more full days imposed in good faith for violations of workplace conduct rules).
4. Offer monetary incentives. White-collar exempt employees generally have to be paid on a salary basis, but they can also receive production-based bonuses. While it may seem counter-intuitive, the "[minimum guarantee plus extras](#)" regulation allows for it and is an effective, yet under-used, tool to incentivize exempt workers:

An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least \$455 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the

employer if the employment arrangement also includes a guarantee of at least \$455 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least \$455 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.