



Conducting a Comprehensive Classification Review

By Liz Snyder

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OVERVIEW

Wage and hour compliance is key to both employee morale and to the bottom line.

Organizations, after all, make headlines almost daily, when they become the defendant in an employee lawsuit or the target of a wage and hour investigation. The price tag for such mistakes can be astronomical. In the wake of a U.S. Department of Labor investigation last year, for example, Farmers Insurance agreed to pay more than \$1.5 million in back pay owed to employees for unpaid overtime. IBM settled similar allegations for \$65 million.

To make matters more urgent, DOL is stepping up its enforcement of wage and hour practices. In addition to increasing its ranks of field investigators by more than 30 percent, it is proposing a new “Plan, Protect, Prevent” agenda, requiring employers to inform workers of their status under the Fair Labor Standards Act, letting them know whether they are exempt from overtime, and if so, under which exemption.

WHO SHOULD CONDUCT A REVIEW?

Let’s be clear: Conducting a job analysis is no fun, especially one related to wage and hour compliance. Managers don’t want to incur the budget increase that may come from the discovery that an exempt employee really should be receiving overtime pay. Similarly, some employees may not like the idea of being downgraded to hourly status while others may want to protect their access to overtime.

Over the years, I’ve learned that employers most likely to be at risk of classification problems are ones who have managers or HR making the following assumptions:

- We pay all our employees a salary, so they’re all exempt.
- Our employees are professionals; the job requires a college degree, so the role is exempt.
- We pay above median, so we don’t worry about overtime; they already make more money than average.
- The employee is a commissioned salesperson; doesn’t that mean he or she is exempt from overtime?
- Sure, we have job descriptions, but they are outdated and inconsistent!
- The employee has been here forever and was promoted into higher level titles, though he or she is still doing similar work.



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- We pay our employees a bonus that is intended to cover all the extra hours they work.

I've also heard employers offer up some creative explanations for why certain employees are classified in a particular way. But the bottom line is, if the classification you've assigned a particular job or group of workers doesn't meet the criteria outlined in the FLSA, it won't pass muster in the courts or with DOL.

The FLSA starts with the presumption that all employees are entitled to overtime unless they fit into a specific exemption. Most exemptions from overtime have both a salary and a duties test, so it's not enough to simply claim workers are exempt because they are paid a salary or "above market." Job titles, years of education and manager proclamation also are not sufficient to warrant an exemption classification. The duties tests for each of the FLSA's exemptions are complex and require a detailed analysis of the role and the employees' exercise of discretion and independent judgment. So if you can unequivocally say that you have a combination of salaried and hourly employees and you review your employee classifications and how employees are paid on a regular basis, then you probably don't need to perform a job classification review — at least not now. But as for the rest of you — read on!

WHICH JOBS SHOULD YOU REVIEW?

It's not unusual for an organization to have scores of active job titles but it's rarely practical to review them all. Employees don't like spending precious time filling out lengthy questionnaires, and few HR departments have the resources. You need to pick the ones most likely to be at risk. These include:

- Job titles, grades or bands with both exempt and nonexempt employees.
- Jobs in departments that have had significant organizational, technology or product change, particularly if increased automation has taken away employee discretion.
- Exempt jobs that have the title "assistant manager" or "team leader" or "supervisor"; oftentimes, in reality, individuals with these titles don't have the kind of discretion or direct reports required to justify exempt status.
- Jobs receiving attention from DOL, the courts, your industry, your city/state, the media, etc. regarding overtime.
- High headcount exempt jobs.
- Entry-level exempt jobs.
- Jobs requiring long work hours.

Even narrowing the sample down to the above criteria, however, may yield a pretty big subset. Before launching a massive job analysis effort, try meeting with compensation or HR generalists who know the content of these jobs to try to eliminate some of them from your sample.

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www.mclagan.com**HOW DO YOU CONDUCT JOB ANALYSIS?**

In job classification reviews, you need to collect detailed information about what employees in the roles are actually doing and identify the “primary duty” of the job. Primary duty analysis includes consideration of several factors, including percentage of time, relative importance of duties, freedom from supervision and pay relationships. Unfortunately, we have five white-collar exemptions, each with a unique primary duty and other factors. How you approach job analysis will depend on your company’s culture, resources and desired level of confidentiality.

The two primary methods used for collecting job data are questionnaires and interviews. And within each of those methods, there are several variations depending on who provides the data and how structured and automated your process is.

Identifying the right subject matter expert to provide detailed job data is not a “one size fits all” solution. Sometimes mid- or senior-level managers can provide sufficient detail about multiple jobs; sometimes you need to talk to first-level supervisors about specific jobs; and sometimes you need to actually talk to and observe the incumbent. There is a delicate balance for each organization and it must take into account time, resources, confidentiality, number of incumbents in the job and quality of information desired and expected. Often, once you determine the appropriate method for gathering job information, the identification of the right subject matter expert becomes obvious. Questionnaires are an often-used job analysis method because they are easy to create and administer. But when the questionnaire gets buried in the proverbial “inbox,” your simple process quickly becomes a game of setting and extending deadlines. Recognize in advance that most people will not make this task a priority. Nor will they always be truthful. Both supervisors and the rank and file may be motivated to inflate job duties, hoping to gain or protect their exempt status and stay “off the clock.” Others, of course, will want to protect their eligibility for overtime. It is important, therefore, to provide detailed training on how to complete the questionnaire, and make sure HR stays intimately involved in reviewing completed questionnaires. The additional time on the front end will yield far more successful results on the back end when classification decisions are being made.

If you have the resources, however, it is always best to conduct face-to-face interviews. Much can be lost in translation when only questionnaires are used. Interviews are the best way to ensure that the right information is obtained the first time and to minimize a paper trail of questionnaires, if confidentiality is an issue. Regardless of the data collection method you ultimately use, keep in mind these additional tips for successful implementation:

- **Don’t ask questions straight from the overtime regulations.** Questions like, “Does the incumbent exercise discretion and independent judgment,” are too specific and will not get you the information you need. Break down the legal definitions into understandable questions so that employees will not have to keep coming back to you with questions, or, worse yet, apply their own definition to legal terms.



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- **Avoid asking employees questions that clearly don't relate to the role.** An IT help desk analyst will appreciate not having to answer questions related to the executive, professional and outside sales exemptions. Be careful, however, not to compromise your ability to get all the information you need to consider every possible exemption.
- **Ask for examples.** This makes it harder for employees to stretch the truth when answering questions like, "Does your position have a significant impact on business operations." Ask for specific examples, and even provide an example to illustrate the level of detail you need. Don't set yourself up for a yes/no response. The wage and hour rules aren't that clear.
- **Automate.** If you can design an electronic questionnaire in Excel or Word, featuring expandable text boxes, drop down pick lists or check boxes, your employees will be appreciative. Better yet, use a web-based questionnaire, which can provide faster turnaround, validation and analysis. Automated tools work well when conducting interviews as well.
- **Include validation.** People tend to be more honest about their work when they know it will be reviewed for accuracy by managers.

Finally, remember that compliance is not a once and out action. HR needs to make sure it has a robust process for job analysis so that when reorganizations happen, or people are promoted or transferred to an exempt job, HR is there to evaluate the jobs and make informed decisions.

ABOUT THE AUTHOR

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