



Webinar 9 – September 2026

The Importance of Properly Classifying Employees and Drafting Effective Job Descriptions

WEBINAR OUTLINE

INTRO/SETTING THE STAGE

- The Importance of Classifying Employees Correctly
- Consequences of Misclassification
- Exempt vs. Non-Exempt Employees
- Independent Contractors vs. Employees

THE IMPORTANCE OF DRAFTING EFFECTIVE JOB DESCRIPTIONS

- Why are Current and Accurate Job Descriptions Important?
- What to Include in the Job Description

HYPOTHETICAL SCENARIOS

HRtelligence TIPS

INTRO/SETTING THE STAGE

A. The Importance of Classifying Employees Correctly

- Employee classification is the backbone of workforce management, impacting everything from payroll to compliance and employee satisfaction.
- For HR professionals and business owners, keeping up with evolving laws and regulations is crucial to protecting your business and supporting your workforce.

B. Consequences of Misclassification

Misclassification can expose your business to serious risks, including:

- Back wages and benefits: Employers may be required to pay back wages, overtime, and benefits to misclassified workers, which can be substantial.
- Legal disputes: Employees misclassified as contractors may sue for unpaid wages, benefits, or wrongful termination.
- Fines and penalties: Federal and state agencies are increasingly aggressive in auditing businesses for compliance.
- Tax liabilities: Misclassification can result in unpaid payroll taxes, which can lead to significant tax liabilities and penalties from the IRS.
- Reputational damage: Misclassification issues can tarnish your company's public image, deterring talent and clients.

C. Exempt Vs. Non-Exempt Employees

The main difference between exempt and nonexempt employees in the U.S. has to do with how they are paid and whether they are eligible for overtime pay.

FLSA Wage & Hour Standards

The FLSA sets out the federal minimum wage, overtime, recordkeeping, and youth employment details; however, New York (and many other states) have promulgated their own wage and hour laws. In such instances, the DOL mandates that employers must apply the minimum wage or overtime rate that is most beneficial to the worker.

i. Non-Exempt Employees Defined

- For the purposes of employee classification, non-exempt employees are not exempt from the FLSA's rules on wages and paid overtime and therefore are entitled to minimum wage protections and additional compensation for overtime hours worked more than 40 hours per week.

- Although nonexempt employees are frequently paid on an hourly basis, they may sometimes be paid a salary.

Salary vs. hourly pay

Pay alone doesn't determine whether an individual is exempt or non-exempt, but it may dictate workplace policies. For instance, employers who have hourly workers must track time and attendance to ensure payroll accuracy. Timekeeping usually isn't as important with salaried employees unless incentives are offered to those who put in extra hours.

Salaried non-exempt employees

Employers should not automatically assume that employees can properly be considered exempt under the FLSA just because they earn a salary. Workers who don't pass the duties test or earn a fixed salary, and make less than the minimum required may be eligible for overtime pay.

ii. Exempt Employees Defined

Employees are eligible for overtime any time they work over 40 hours a week, unless they fit into a specific FLSA exemption. To be exempt from the overtime requirements under the exemptions of the FLSA, employees must satisfy the following three tests:

- The salary basis test (*i.e.*, they must be paid a fixed, predetermined salary that is not reduced because of variations in the quality or quantity of work performed);
- The duties test (*i.e.*, their job duties must primarily involve executive, administrative or professional duties as defined by the FLSA regulations); and
- The salary threshold test (*i.e.*, the amount of salary they are paid must meet or exceed the standard salary level).

Currently, employees in executive and administrative positions in NYC, Nassau, Suffolk, and Westchester must be paid at least \$1,237.50 per week, or \$64,350.00 per year. Employees in those positions in the remainder of the state must be paid at least \$1,161.65 per week, or \$60,405.80 per year.

D. Independent Contractors vs. Employees

Classifying a worker as an employee or an independent contractor depends on the overall degree of control and economic independence in the working relationship, rather than just a job title or a signed agreement.

Key Tests for Classification

- **Behavioral Control:** If a company controls what work is done and how, when, or where it is done, is an employee.

- **Financial Control:** Employees receive regular wages, have taxes withheld, and use company-provided tools. Contractors typically invest in their own equipment, submit invoices, and control their business expenses.
- **Type of Relationship:** Employees often receive benefits (like insurance or paid time off) and perform tasks central to the core operations of the business. Contractors usually have project-based contracts and run an independent trade

II.THE IMPORTANCE OF DRAFTING EFFECTIVE JOB DESCRIPTIONS

A well-written job description can help:

- Support performance management.
- Ensure that a company is in compliance with labor and employment laws.

Job descriptions offer a roadmap for your employees, so they know what to expect both now and in the future.

Job descriptions are flexible that are intended to grow and change over the course of your employee's time at your company, but they are also only effective if you spend time to make them as accurate as possible.

Well-written job descriptions don't just help an employee understand their role and responsibilities; they also protect organizations in the event of legal action.

A. Why Are Current and Accurate Job Descriptions Important?

- Job descriptions list the main features of a specific job.
- The description typically includes the person's primary duties, responsibilities, and working conditions.
- It also consists of the job title and to whom the person holding that job has to report.

Having an accurate job description can:

- Provide a defense for a discrimination in hiring claim.
- Serve as legal documentation that can be useful in the event an employee files a termination or discrimination lawsuit against the company.
- Act as a basis for determining exemption status from overtime requirements under the FLSA.
- Provide a guideline for determining essential job functions of a job when an employee has a potential disability.

- Provide a guideline for determining a “similar job” under FMLA’s return to work.
- Outline physical demands of the job and ensure compliance under OSHA.

Hiring:

Accurate job descriptions are critical to establishing the minimum requirements for the position before and during the recruiting process.

Identifying the essential duties of a position before interviewing is an important exercise that helps focus the recruiting process on those skills that are most essential, which in turn increases the likelihood that the correct person will be hired for the job.

Classification of Exempt/Non-Exempt Employees

Accurate job descriptions are useful for clarifying whether an employee is exempt or non-exempt from overtime requirements under the Fair Labor Standards Act (“FLSA”) and state wage and hour laws.

A job description is critical in determining whether an employee is properly classified as exempt from overtime.

ADA Accommodations

An accurate job description – including especially an accurate list of minimum qualifications and essential job functions – is critical in determining whether an employee or job applicant with a disability is “qualified” under the ADA and what type of accommodation may be required. To be “qualified,” an individual must have the requisite skills, experience, education, and licenses for the job, and must also be able to perform the essential functions of the job, with or without reasonable accommodation.

Under the ADA, an employer is never required to eliminate an employee’s essential job functions as part of a reasonable accommodation. An employee’s written job description is given deference by the EEOC and the Courts when there is a dispute about whether a skill is required and whether a particular function is essential.

Return from Leave Issues

Job descriptions may be provided to health care providers when determining whether an employee is fit to return to work after taking medical leave under the Family Medical Leave Act (“FMLA”) or ADA. This provides the medical professional with a convenient means of evaluating the employee’s job functions and his or her ability to perform them with or without accommodations.

Equal Pay Analysis

Job descriptions help reduce potential liability in cases involving compensation and equal pay issues.

Differing job descriptions may be evidence that different jobs are not functionally equivalent and therefore need not be paid the same.

RIFs/Succession Planning

Job descriptions also can assist management when planning reductions in force, right sizing, and succession planning. In these situations, management can review accurate job descriptions to determine what jobs are still needed under circumstances where it could be uncomfortable, inappropriate, or inconvenient to interview the employees themselves about their job functions.

Defending Wrongful Termination Claims

When called upon to defend an employee's termination in a discrimination or other wrongful termination lawsuit, being able to point to the employee's job description as evidence of the employer's legitimate expectations can be powerful evidence to rebut an allegation of discrimination.

Demonstrating that an employee cannot perform an essential job function as described in a job description can be convincing evidence that there was cause for discipline or termination.

B. What to Include in the Job Description

An effective job description details the primary functions of the job, how the tasks will be carried out, and the necessary skills needed to perform the job. It should include the following:

- **Job Title:** This clarifies the position, job title, and rank or level (if applicable).
- **Salary Range:** List starting salary, mid-range, and high (maximum) salary for the position. You should also include information about how employees may be eligible for additional compensation (e.g., sales commissions, performance bonuses, annual raises, etc.).
- **Exemption Status and Basis for Exemption:** You should list the position's status and explain why it has been designated as such.
- **Statement of Purpose and Objectives:** Include a general statement summarizing in three or four sentences the purpose or objective of the position.
- **Description of Reporting Structure:** This section provides a detailed description of any and all roles the employee will hold. This should include their own supervisory roles (if any) as well as whom they are subordinate to directly and indirectly. If the employee is to work with other employees or departments, include that information as well. It is helpful to include a corporate

organizational flow chart that depicts all positions in the company and their hierarchy.

- **Experience and Skills:** Be as specific as possible when detailing the experience and skills required to perform the job. For example, if the position requires the use of a computer, list the type of software or hardware used to perform the job.
- **Physical Requirements:** Any physical requirements (e.g. must be able to lift 50 pounds) should be clearly detailed and explained.
- **Description of Ideal Candidate:** Detail other strengths needed to perform the job such as "ability to work with tight deadlines and multiple bosses."
- **Work Location and Schedule:** List the physical location of the job, the days and hours of the position, and include any potential overtime that may be required to perform the job.

III. HYPOTHETICAL SCENARIOS

Scenario 1

Apex Logistics, a mid-sized regional distribution company, hired Sarah as an "Operations Coordinator" two years ago.

The Misclassification: Apex placed Sarah on a flat salary of \$52,000 per year (\$1,000/week) and classified her as **Exempt** under the Fair Labor Standards Act (FLSA) administrative exemption.

The Actual Duties:

- *On Paper:* Sarah's job description states she "manages supply chain logistics and exercises independent business judgment."
- *In Reality:* Sarah spends 80% of her time performing routine data entry, tracking shipments via a standard software template, answering basic customer support calls, and printing shipping labels. She follows strict standard operating procedures and has no authority to negotiate vendor contracts, make policy decisions, or direct the work of others.
- *Work Pattern:* Because Apex considered her exempt, Sarah routinely worked **50 hours per week** (10 hours of overtime per week) without overtime pay or recorded meal/rest breaks.

The Discovery: After a performance dispute, Sarah consulted an employment attorney who notified Apex Logistics that Sarah failed the FLSA "duties test" for administrative exemption. The letter alleged two years of unpaid overtime, totaling 1,040 hours of uncompensated overtime.

Liability Exposure

Under the FLSA and state wage laws, Apex Logistics faces major financial exposures:

1. **Unpaid Overtime (Back Pay):** Recalculating her regular hourly rate (\$52,000 / 2,080 hours = \$25/hour) leads to an overtime rate of \$37.50/hour. 1,040 overtime hours = **\$39,000** in base back pay.
2. **Liquidated Damages:** Mandatory double damages under the FLSA for willful or reckless violations (an additional **\$39,000**).
3. **Attorney Fees & Court Costs:** Reimbursing the plaintiff's legal counsel.
4. **Interest & Statutory Penalties:** State-level penalties (e.g., missed meal/rest break penalties, wage statement violations).
5. **Widespread Audit Risk:** A Department of Labor (DOL) audit if other employees in similar roles were also misclassified.

Corrective Action Roadmap

Conduct an Immediate Internal Wage & Duty Audit

Establish facts under attorney-client privilege

- Engage outside legal counsel to conduct an audit under attorney-client privilege to evaluate exposure without creating discoverable self-incriminating documents.
- Shadow the position and conduct employee interviews to compare actual day-to-day duties against FLSA/state duties tests, rather than relying on written job descriptions.
- Identify whether other employees hold the same title or perform identical nonexempt functions.

Reclassify the Position & Transition Pay Structure

- Reclassify Sarah (and any peer Operations Coordinators) to Nonexempt status effective immediately.
- Convert compensation to an hourly rate or set a compliant salaried-nonexempt structure that tracks all hours worked.
- Implement time-tracking software and establish a clear company policy prohibiting off-the-clock work or unapproved overtime.

Calculate Back Pay & Prepare Settlement Options- Formulate mitigation strategies

- Audit historical time records, badge scans, email timestamps, and system login logs to determine actual hours worked.
- Option A (Direct Settlement): Offer Sarah a lump-sum payment covering full back overtime plus a negotiated portion of liquidated damages in exchange for a confidential FLSA waiver/release agreement.

- Option B (DOL Self-Audit Program): Utilize voluntary resolution frameworks (such as the DOL's PAID program if active/applicable) to pay back wages under federal supervision, which waives liquidated damages and civil money penalties.

Train Managers & Update Company Policies - Prevent future systemic misclassification

- Conduct training for HR and hiring managers on FLSA exemption tests (Executive, Administrative, Professional) to prevent automatic classification based solely on salary level.
- Institute a policy requiring legal/HR approval before creating any new exempt job profile or altering duty expectations.

Scenario 2

Apex Logistics, a regional freight brokerage, hires 15 "Independent Logistics Coordinators" to manage client dispatches. They sign 1099 agreements, but Apex requires them to work set 8 AM to 5 PM shifts in the office, provides their computers, dictates their exact software workflows, and restricts them from taking outside work.

After two years, a worker files an unemployment claim following a contract termination. The state agency flags the working conditions, triggering an audit for back pay, unpaid overtime under the Fair Labor Standards Act (FLSA), unpaid payroll taxes (FICA/FUTA), and employee benefit liabilities.

Conduct an Internal Classification Audit

- Review all 1099 roles against applicable standards (such as the DOL economic reality test, IRS 20-factor test, or state ABC tests).
- Evaluate actual day-to-day behavioral and financial control, not just the language in signed contracts.
- Quantify potential back-pay exposure, including unrecorded overtime, missing meal breaks, and unpaid benefits over the relevant statutory periods (typically 2–3 years).

Reclassify Workers and Update Payroll Systems

- Transition misclassified workers onto W-2 status immediately.
- Standardize wage tracking by setting up timekeeping systems to log daily hours and calculate statutory overtime correctly.
- Establish compliant baseline compensation, ensuring hourly rates or salaries meet federal and state minimum wage thresholds.

Leverage Voluntary IRS and State Settlement Programs

Reduce back-tax exposure and avoid strict penalties

- Apply for the IRS **Voluntary Classification Settlement Program (VCSP)** if eligible, which allows employers to reclassify workers for future tax periods while paying only 10% of the employment tax liability for the most recent tax year, with zero interest or penalties.
- Check for state-level voluntary disclosure agreements (VDAs) to settle unpaid state unemployment taxes (SUTA) under reduced penalty terms.

Provide Back Pay and Execute Valid Settlement Releases-Mitigate private wage-and-hour lawsuit risks

- Calculate and tender back wages (unpaid overtime, minimum wage shortfalls) owed to affected workers.
- Engage legal counsel to draft clear release agreements. For federal wage claims under the FLSA, coordinate settlements through Department of Labor Supervision (Form WH-56) or court approval to ensure the waivers are legally binding and enforceable.

Update Operational Governance and Contracts - Prevent future systemic misclassifications

- Redraft standard contractor agreements for genuine 1099 roles, removing exclusivity clauses, dictated working hours, and employer-provided equipment mandates.
- Train managers and HR personnel on the operational boundaries between managing direct employees versus overseeing independent service providers.



Incorrectly classifying an employee can result in fines and penalties, which may include payment for back wages. Employers should adhere to the following best practices to avoid the expensive consequences of employee misclassification:

- Review and understand the rules and regulations outlined by the FLSA and in New York regarding exempt vs. nonexempt classifications.
- Consistently review, update, and use job descriptions to ensure employees performing similar duties are classified consistently. The key functions and responsibilities of a given employee will dictate whether that position can qualify for one of the exemptions that would allow an employer to exempt the employee from overtime under the FLSA.
- The job title does not determine whether an employee is exempt from the overtime rules--instead, their job duties, whether they are paid on a salary basis, and whether they meet certain salary thresholds determine whether they are properly classified as an exempt employee.