

**Common HR Myths & Misconceptions**




January 6<sup>th</sup>, 2020

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## Agenda

- 01 Exempt vs. non-exempt classifications
- 02 Independent contractor vs. employee classifications
- 03 Interview questions, probationary periods, and other hiring considerations
- 04 At-will, final pay, and other termination considerations

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## Employee Classifications

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## Fair Labor Standards Act (FLSA) overview

 Defines exempt vs. non-exempt status	 Governs federal minimum wage and overtime	 Covers nearly all employers
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**FLSA common exemption tests**

 <p><b>Salary-level test</b></p> <p>Earns at least \$684/week</p>	 <p><b>Salary-basis test</b></p> <p>Paid a fixed salary each workweek regardless of hours worked</p>	 <p><b>Duties test</b></p> <p>Job duties must meet established criteria</p>
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DOL Fact Sheet #17A: [http://www.dol.gov/eis/overtime/17a\\_overview.pdf](http://www.dol.gov/eis/overtime/17a_overview.pdf)




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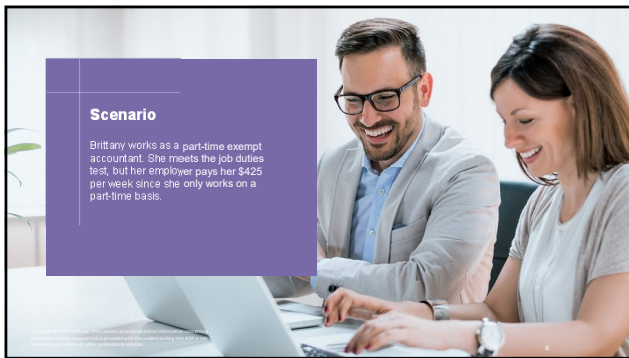
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**Scenario**

Brittany works as a part-time exempt accountant. She meets the job duties test, but her employer pays her \$425 per week since she only works on a part-time basis.




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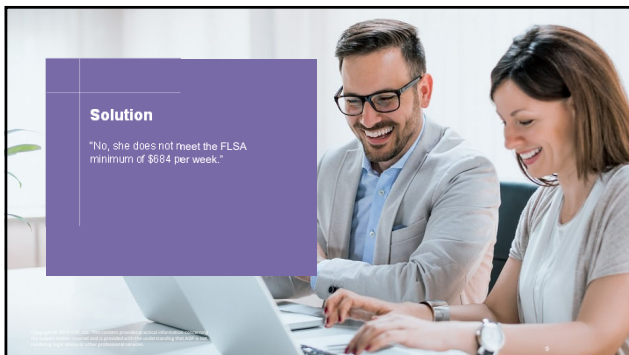
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**Solution**

"No, she does not meet the FLSA minimum of \$684 per week."




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**Myth #1:** All salaried employees are exempt.

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**Fact:** Employees must meet all salary and duties tests to qualify as exempt.

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**Salaried non-exempt**

 <p>Must receive at least the minimum wage for all hours worked</p>	 <p>Must be paid overtime when due</p>	 <p>Deductions from salary are generally permitted (As long as it doesn't reduce their pay below the minimum wage)</p>
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**Salaried non-exempt: overtime example**

An employee is hired to work 40 hours for a salary of \$440. He works 45 hours in one workweek.

- $\$440 / 40 = \$11$  regular rate of pay
- $\$11 \times 1.5 = \$16.50$  overtime rate
- 5 overtime hours  $\times$   $\$16.50 = \$82.50$  overtime pay due

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**Myth #2:** Overtime is only due when authorized in advance or when an employee hasn't waived their right to it.

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**Fact:** Under the FLSA, overtime must be paid whenever an employee works more than 40 hours in a workweek (some states require overtime in additional circumstances).

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### Overtime: problematic practices

 <p>Extra time off instead of overtime pay</p>	 <p>Averaging hours over two workweeks</p>	 <p>Requiring or allowing off-the-clock work</p>
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### Best practices

- ✓ Pay all non-exempt employees in accordance with federal, state and local laws
- ✓ Regularly audit worker classifications
- ✓ Promptly correct any misclassifications
- ✓ Communicate reasons for reclassifications

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### Independent Contractors

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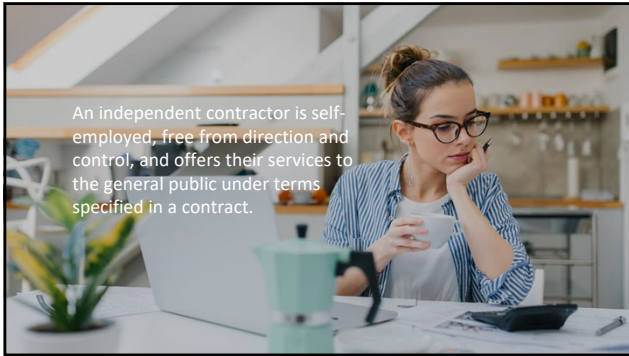
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**Myth #3:** If the worker signs a contract with an employer, they're an independent contractor.

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**Fact:** A worker is presumed to be an employee unless they meet specific requirements under federal and state law.

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**Myth #4:** Individuals who work from home and have some flexibility over work hours are independent contractors.

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**Fact:** Workers are not independent contractors simply because they work offsite with flexible work hours.

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**Best practices**

- ✓ Carefully evaluate all applicable federal and state tests
- ✓ When in doubt, classify the worker as an employee
- ✓ Work with your legal counsel to conduct an audit

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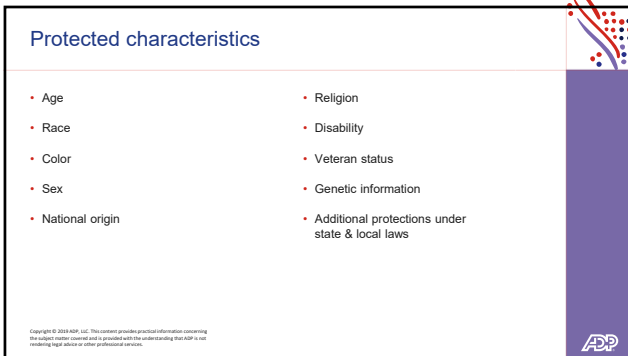
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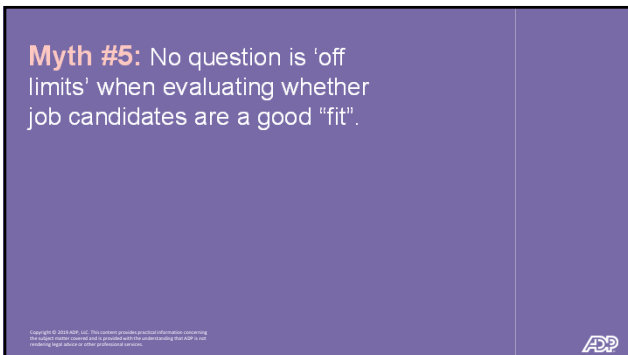
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**Fact:** Avoid questions that are prohibited by law or reveal an applicant is a member of a protected group.

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**Questions to avoid during the interview**

- ✓ **How many sick days did you use last year?**  
May reveal medical condition or prior use of job protected leave.
- ✓ **What is your current salary?**  
Pay history questions may be prohibited in your jurisdiction.
- ✓ **Can you work Sundays?**  
May reveal religious beliefs and practices.

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**Questions to avoid during the interview (cont'd)**

- ✓ **Where is your accent from?**  
May reveal national origin.
- ✓ **Do you have or plan to have children?**  
May reveal pregnancy or family status.
- ✓ **Do you have a disability?**  
May reveal disability under the Americans with Disabilities Act (ADA).

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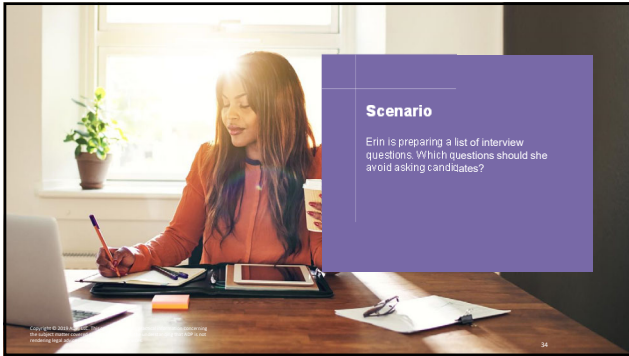
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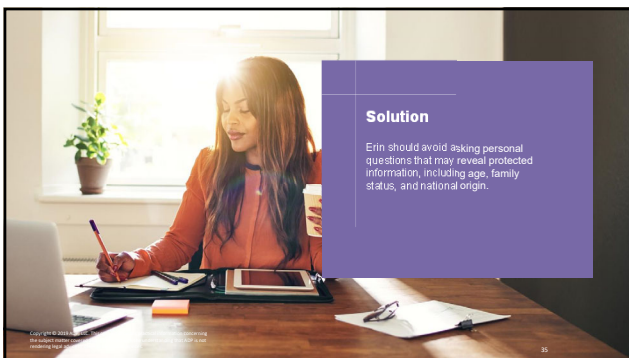
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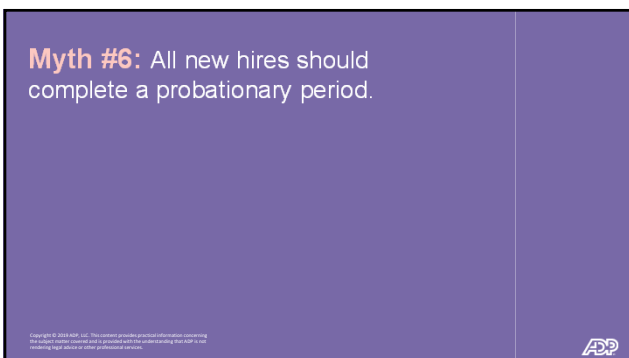
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**Fact:** Probationary periods can lead to confusion regarding "at-will" status.

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**Best practices**

- ✓ Train hiring managers on what they can and cannot ask
- ✓ Update forms/practices to remove salary history questions
- ✓ Set clear performance goals for all new hires

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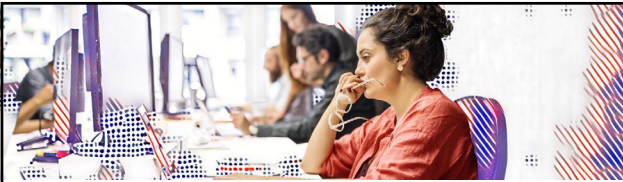
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**Termination Considerations**

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**Myth #7:** "At-will" means I can fire my employees anytime and for any reason.

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**Fact:** While "at-will" generally means you can terminate an employee for any reason, the reason must be lawful.

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**Myth #8:** If I need to, I can withhold an employee's final pay.

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**Fact:** Employers must meet final pay deadlines, regardless of whether the employee fails to return company property.

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### Deductions from final pay

 <p>FLSA limits deductions from a non-exempt employee's pay</p>	 <p>Deductions may be further limited or prohibited by state law</p>	 <p>Deductions are generally prohibited from exempt employees' pay</p>
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**Myth #9:** If my employee quits, there's no reason to get their resignation in writing.

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**Fact:** It's a best practice to obtain the employee's resignation in writing to document that they're leaving voluntarily.

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**Myth #10:** Exit interviews are a waste of time.

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**Fact:** Exit interviews can help you identify the reasons employees are resigning so you can make workplace improvements.

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### Exit interview best practices

- ✓ Provide resigning employees with a questionnaire
- ✓ Review questionnaire in-person and ask follow-up questions
- ✓ Explain the purpose to help facilitate candor

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### Takeaways

- ✓ Ensure thorough and proper documentation
- ✓ Review & understand all final pay rules
- ✓ Obtain voluntary resignations in writing
- ✓ Conduct exit interviews with resigning employees
- ✓ Treat employee terminations carefully

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### Q&A

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