

**GUIDELINES TO DETERMINE
FLSA STATUS**

State of Hawaii
Department of Human Resources Development
Employee Classification & Compensation Division
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TABLE OF CONTENTS

I.	BACKGROUND	1
	FLSA Overtime Requirements.....	1
	Exemptions From FLSA Overtime Provisions	1
II.	GUIDELINES TO DETERMINE FLSA STATUS.....	2
	Executive Exemption	2
	Administrative Exemption	3
	Learned Professional Exemption.....	3
	Creative Professional Exemption.....	3
	Highly Compensated Worker Exemption.....	4
	Computer Employee Exemption	4
III.	FLSA DESIGNATIONS IN THE STATE'S COMPENSATION PLANS	5
IV.	PROCEDURES TO DETERMINE FLSA STATUS.....	6
	Position/Employee FLSA Status Worksheet.....	9
V.	DEPARTMENTS'/AGENCIES' RESPONSIBILITIES.....	11
VI.	APPENDIX	
	A. Overview - Fact Sheet #17A: Exemption for Executive, Administrative Professional, Computer & Outside Sales Employees Under FLSA	
	B. Non-Exempt Worker Categories	
	C. Glossary	
	D. Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions Under the FLSA	
	E. Fact Sheet #17B: Exemption for Executive Employees Under the FLSA	
	F. Fact Sheet #17C: Exemption for Administrative Employees Under the FLSA	
	G. Fact Sheet #17D: Exemption for Professional Employees Under the FLSA	
	H. Fact Sheet #17H: Highly Compensated Workers and the Part 541 Exemptions Under the FLSA	
	I. Fact Sheet #17E: Exemption for Employees in Computer-Related Occupations Under the FLSA	

I. BACKGROUND

The Fair Labor Standards Act (FLSA) of 1938 was enacted to prevent employers from taking advantage of employees. The federal law sets standards for minimum wage, overtime pay, equal pay, record keeping and child labor.

FLSA OVERTIME REQUIREMENTS

The FLSA requires that employees be paid at least one and one-half times their regular rate of pay for all hours worked over 40 hours in a workweek, unless they are excluded or exempt from FLSA overtime provisions. For most employees, the workweek runs from Sundays at 12:01 a.m. through Saturdays at midnight. Employees involved in fire protection or law enforcement activities (including security personnel in correctional institutions) have a higher threshold after which overtime must be paid; they may be paid overtime on a “work period” basis, where the “work period” may be from 7 to 28 consecutive days in length.

Generally, overtime provisions contained in Hawaii’s State laws, personnel rules and employees’ collective bargaining contracts are more generous than FLSA provisions. However, not all employees are covered by the State employees’ overtime provisions, some of whom may be entitled to overtime pay based on FLSA overtime provisions. There are also other FLSA requirements, including limits on the accumulation of compensatory time off (CTO) hours that apply to all FLSA non-exempt/non-excluded employees.

EXEMPTIONS FROM FLSA OVERTIME PROVISIONS - See Appendix A

FLSA provides exemptions from overtime pay requirements for employees who meet criteria specified by the FLSA. The criteria permit exemption of *executive, administrative, learned professional, creative professional, highly compensated workers* and *computer employees*, as these terms are defined by the FLSA. These exemptions are covered in Title 29 of the Code of Federal Regulations (CFR), Part 541. To qualify for FLSA exemption, employees generally must meet certain tests regarding their job duties and their compensation.

(Note: The terminology used for purposes of FLSA exemption may be different from the way terms are used by the State HR system. For example, a position may be considered ‘professional’ for purposes of being included in Bargaining Unit 13, but may not be considered ‘professional’ for purposes of FLSA exemption. Also, “exempt from civil service” does not relate to the FLSA Exempt status of an employee. “Exempt from civil service” refers to a non-civil service position/appointment to a position that is exempt from civil service.)

Certain employees are not eligible for exemption from FLSA (see Appendix B), including:

- a) Blue-collar employees, regardless of how well they are compensated. Blue-collar supervisors, however, may qualify for exemption.
- b) First responders, public safety employees, including but not limited to deputy sheriffs, fire fighters, correction officers, building inspectors, and investigators, although supervisory employees may qualify for exemption.
- c) Trainees.

II. GUIDELINES TO DETERMINE FLSA STATUS

The purpose of these guidelines is to provide assistance in determining the FLSA status of an employee, i.e., whether an employee is *exempt* (not covered) or *non-exempt* (covered) from FLSA overtime provisions. FLSA exempt or non-exempt status is determined on the basis of whether the employee's salary and duties meet certain criteria, and is not based on classes of work or job titles.

The FLSA status of all employees (civil service and exempt from civil service) should be determined, and reviewed and updated, if necessary, whenever there are changes in their duties and responsibilities and/or compensation that may affect their FLSA status.

Summary criteria for each exemption are provided below. For more detailed information, please refer to the Fact Sheets and Glossary in the Appendices that are contained in this document.

The U.S. Department of Labor's web site <http://www.dol.gov/compliance/laws/comp-flsa.htm> contains a lot of information regarding FLSA regulations and exemptions, and provides tools to assist you in determining whether employees are exempt from FLSA; see <http://www.dol.gov/elaws/esa/flsa/overtime/menu.htm>.

Executive Exemption (Appendix E)

To qualify for the Executive Exemption, all of the following tests must be met:

- a) Employee is compensated on a salary basis (see Appendix D) at a rate not less than \$455 per week; and

- b) Employee's primary duty involves the management of a customarily recognized department or subdivision of the enterprise; and
- c) Employee customarily and regularly directs the work of two or more other employees or their equivalent (e.g., 2 full-time equivalent); and
- d) Employee has the authority to hire or fire other employees, or the employee's suggestions and recommendations as to hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

Administrative Exemption (Appendix F)

To qualify for the Administrative Exemption, all of the following tests must be met:

- a) Employee is compensated on a salary basis (see Appendix D) at a rate not less than \$455 per week; and
- b) Employee's primary duty involves performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- c) Employee's primary duty includes the exercise of discretion and judgment with respect to matters of significance.

Learned Professional Exemption (Appendix G)

To qualify for the Learned Professional Exemption, all of the following tests must be met:

- a) Employee is compensated on a salary basis* (see Appendix D) at a rate not less than \$455 per week; and
- b) Employee's primary duty involves performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning.

**Salary and salary basis requirements do not apply to teachers and employees engaged in the practice of law or medicine.*

Creative Professional Exemption (Appendix G)

To qualify for the Creative Professional Exemption, all of the following tests must be met:

- a) Employee is compensated on a salary basis (see Appendix D) at a rate not less than \$455 per week; and

- b) Employee's primary duty involves performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Highly Compensated Worker Exemption (Appendix H)

To qualify for the Highly Compensated Worker Exemption, all of the following tests must be met:

- a) Employee's total annual compensation is at least \$100,000 a year; and
- b) Employee performs office or non-manual work; and
- c) Employee customarily and regularly performs one or more of the duties identified in the tests for executive, administrative or professional exemption.

Note: An employee's total annual compensation must include at least \$455 per week paid on a salary or fee basis, and may include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period. It does not include board, lodging, payments for medical and life insurance, contributions to retirement plans and the cost of other fringe benefits.

Computer Employee Exemption (Appendix I)

To qualify for the Computer Employee Exemption, all of the following tests must be met:

- a) Employee is compensated on a salary basis (see Appendix D) at a rate not less than \$455 per week, or if compensated on an hourly basis, not less than \$27.63 per hour; and
- b) Employee is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field; and
- c) Employee's primary duty involves:
 - Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional applications; or
 - 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; or

- Design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- A combination of the aforementioned duties described above, the performance of which requires the same level of skills.

The Computer Employee Exemption does not apply to employees engaged in the manufacture or repair of computer hardware and related equipment. Similarly, the exemption does not apply to employees whose work is highly dependent upon, or facilitated by, the use of computers or software, but who are not primarily engaged in the computer systems analysis and programming or other similar occupations.

Outside Sales Exemption – We are not currently aware of any employees who qualify for this exemption.

III. FLSA DESIGNATIONS IN THE STATE'S COMPENSATION PLANS

FLSA exemptions are based on the work performed by an employee, rather than on a position basis. However, the State's compensation plans can be used to assist in determining whether an employee who occupies a civil service position is likely to be FLSA exempt or non-exempt. Based on the general application of FLSA exemption guidelines, classes in the State's compensation plans have been coded to indicate whether positions/employees performing work characteristic of civil service classes of work may be FLSA exempt:

- N** - Non-exempt from FLSA (covered by overtime requirements);
- E** - Exempt from FLSA (not covered by overtime requirements); or
- R** - A number of civil service classes do not readily lend themselves to blanket FLSA designations (e.g., multiple class concepts). These classes have been coded "R," for review. The FLSA status of the position/employee must be determined on an individual basis.

These pre-determined codes are guidelines only, and are not applicable if:

1. The employee's actual duties are not accurately described in the position description;
2. The employee's actual duties are not a true reflection of the concept of the class to which it is allocated;
3. The position is misclassified;

4. The employee is not actually performing the duties and responsibilities assigned to the position;
5. The employee is not paid on a salary basis, or is paid less than \$455 per week; or is a computer employee who is paid on an hourly basis, less than \$27.63 per hour.

If any of the conditions listed above exist, corrective action should be taken, if necessary (e.g., position descriptions should be updated to accurately reflect assigned duties), and the FLSA status for the affected position/employee must be determined on an individual basis.

IV. PROCEDURES TO DETERMINE FLSA STATUS

STEP 1

A. **FOR CIVIL SERVICE POSITIONS/EMPLOYEES**, the FLSA field in the Position Management Module of HRMS is automatically populated with the FLSA codes from the State's Compensation Plans.

N = Non-exempt from FLSA overtime provisions. No further review is needed; the employee is FLSA non-exempt, unless the employee earns \$100,000 or more per year. If the employee earns \$100,000 or more per year, refer to Appendix H - Exemption Criteria for Highly Compensated Workers.

E = Exempt from FLSA overtime provisions. Verify that:

- The work performed by the employee is reflected in the concept of the class and the class specification; and
- The employee is paid at least \$455 per week on a salaried basis (or at least \$27.63 per hour if employee is a Computer Employee).

R = Review the employee's compensation and duties and responsibilities to determine whether the employee is non-exempt or exempt from FLSA overtime provisions.

B. **FOR POSITIONS/EMPLOYEES THAT ARE EXEMPT FROM CIVIL SERVICE** and perform work similar to a civil service class, the FLSA designation in the State's Compensation Plans may be used. Otherwise, the FLSA status of the position/employee must be reviewed on an individual basis. If the FLSA designation is **R**, FLSA status must be determined on an individual (employee) basis.

Exclusions:

1. *Elected officials (Governor and Lt. Governor) and personal staff members and officials in policy making positions who are selected or appointed by the elected public officials, and certain advisers to such officials, are excluded from FLSA coverage and should be coded X. These exclusions are covered in Title 29 of the Code of Federal Regulations (CFR), Part 553.*

Personal staff members generally include only persons who are under the direct supervision of the selecting elected official and have regular contact with such official. It does not typically include individuals who are directly supervised by someone other than the elected official even though they may have been selected by the official.

In addition, in order to qualify as a personal staff member or official in a policymaking position, the individual must not be subject to the civil service laws of their employing agencies. In addition, such personal staff members must be appointed by, and serve solely at the pleasure or discretion of the elected official.

The Governor and Lt. Governor (Job Code 46.000) are excluded from FLSA coverage and should be coded **X**.

Appointed department directors and deputy directors (Job Code 43.000) are excluded from FLSA coverage and should be coded **X**.

Other personal staff members of the Governor and Lt. Governor's office should be reviewed individually to determine whether they should be excluded, exempt or non-exempt from FLSA coverage and coded appropriately.

2. *According to the U.S. Department of Labor, Wage and Hour Division (Honolulu Office), full-time National Guard members (under Title 10 or Title 32 of the U.S. Code) are not covered by FLSA.*

Full-time National Guard members (Job Code 42.000) are excluded from FLSA coverage and should be coded **X**.

- C. FOR POSITIONS/EMPLOYEES THAT DO NOT PERFORM WORK REFLECTED IN A CIVIL SERVICE CLASS OF WORK, FLSA status must be determined individually based on exemption criteria.**

STEP 2

Complete the HRD 281 - Position/Employee FLSA Status Worksheet, and indicate whether the position/employee is FLSA non-exempt (**N**), FLSA exempt (**E**), or excluded (**X**) from FLSA coverage. Attach additional sheets/justification if necessary. The

Position/Employee FLSA status worksheet should be retained by the departmental personnel office.

STEP 3

Indicate the FLSA status (**N**, **E** or **X**) for the position/employee on the HRD-1 form (Field 13g) and in the FLSA Status fields in the Position Management and Administer Workforce modules of the HRMS.

POSITION/EMPLOYEE FLSA STATUS WORKSHEET

Employee Name (Last, First) _____
 Pos. No. _____ Civil Service Exempt from Civil Service
 Class Code, Class Title, Pay _____
 Grade, BU _____
 Dept/Division/Branch _____

EMPLOYEE IS FLSA NON-EXEMPT (COVERED) FOR THE FOLLOWING REASON(S):

Paid on an hourly basis Clerical work First responder
 Paid less than \$455/week Blue collar work Trainee
 Other (explain below): Technician Does not meet exemption tests

EMPLOYEE IS FLSA EXEMPT (NOT COVERED) BASED ON THE FOLLOWING EXEMPTION:

Executive Administrative Learned Professional Creative Professional Highly Compensated Wkr Computer Employee

EMPLOYEE IS EXCLUDED FROM FLSA BASED ON THE FOLLOWING:

Governor/Lt. Governor Department Director/ Deputy Director Gov/Lt. Gov Personal Staff Member Full-Time National Guard Member

PROGRAM	DEPARTMENT PERSONNEL OFFICE
Contact Name: Job Title: Phone: _____ E-mail: _____ Date: _____	Reviewed by: Job Title: Phone: _____ E-mail: _____ Date: _____

FLSA EXEMPTION ANALYSIS

EMPLOYEE MEETS ALL THREE TESTS FOR ADMINISTRATIVE EXEMPTION AND IS PAID AT LEAST \$455 PER WEEK ON A SALARIED BASIS. Indicate employee's gross weekly pay: _____

Primary duty is the performance of office or non-manual work directly related to the management or general business operations (work directly related to the running or servicing of the business) of the employer.
 Performs work in one of the following areas (check all that apply):

<input type="checkbox"/> Tax	<input type="checkbox"/> Quality control	<input type="checkbox"/> Public relations
<input type="checkbox"/> Finance	<input type="checkbox"/> Purchasing and procurement	<input type="checkbox"/> Government relations
<input type="checkbox"/> Accounting	<input type="checkbox"/> Human resources	<input type="checkbox"/> Research
<input type="checkbox"/> Auditing	<input type="checkbox"/> Labor relations	<input type="checkbox"/> Legal and regulatory compliance
<input type="checkbox"/> Budgeting	<input type="checkbox"/> Safety and health	<input type="checkbox"/> Insurance adjuster
<input type="checkbox"/> Computer network, internet and database administration	<input type="checkbox"/> Marketing/advertising	
<input type="checkbox"/> Other (explain): _____		

Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
 Must be responsible for at least 3 of the duties listed below (check all that apply):

- Authority to formulate, affect, interpret or implement management policies or operating policies
- Carries out major assignment in conducting business operations
- Performs work that affects operations to a substantial degree
- Authority to commit employer in matters having significant financial impact
- Authority to waive or deviate from established policies and procedures without prior approval
- Authority to negotiate and bind the State on significant matters
- Provides consultation or expert advice to management
- Plans long- or short-term business objectives
- Authority to investigate and resolve matters of significance on behalf of management
- Represents the State in handling complaints, arbitration or resolving grievances (negotiating on behalf of employer with some degree of settlement authority).

Compares and evaluates possible courses of conduct and acts or makes a decision after various possibilities have been considered and has the authority to make an independent choice, free from immediate direction or supervision. May be subject to review by higher authority and must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.

<input type="checkbox"/>	<p>EMPLOYEE MEETS ALL THREE TESTS FOR <u>EXECUTIVE EXEMPTION</u> AND IS PAID AT LEAST \$455 PER WEEK ON A SALARIED BASIS. Indicate employee's gross weekly pay: _____</p> <p><input type="checkbox"/> Customarily and regularly directs the work of 2 or more FTE employees. Position numbers, titles and pay grades of employees directly supervised:</p> <p><input type="checkbox"/> Primary duty is management of a department or subdivision thereof. Must actually be in charge of a recognized unit (e.g., division, branch, section) with a continuing function in the organization. Name of department/subdivision managed:</p> <p>Must perform at least 3 of the duties listed below (check all that apply):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Interviews, selects and trains employees. <input type="checkbox"/> Sets and adjusts rates of pay and work hours. <input type="checkbox"/> Directs employees' work. <input type="checkbox"/> Appraises employee productivity and efficiency (evaluates performance). <input type="checkbox"/> Handles employee complaints and grievances. <input type="checkbox"/> Disciplines employees. <input type="checkbox"/> Plans and apportions the work among employees. <input type="checkbox"/> Determines the techniques to be used. <input type="checkbox"/> Determines types of materials, supplies, equipment or tools to be used. <input type="checkbox"/> Provides for the safety and security of employees or property. <input type="checkbox"/> Plans and controls the budget. <input type="checkbox"/> Monitors or implements legal compliance issues. <p><input type="checkbox"/> Recommendations pertaining to changes in employee status are given "particular weight."</p>
<input type="checkbox"/>	<p>EMPLOYEE MEETS EXEMPTION AS A <u>LEARNED PROFESSIONAL</u> AND IS PAID AT LEAST \$455 PER WEEK ON A SALARIED BASIS. (Salary basis requirement does not apply to teachers and employees who practice medicine or law.) Indicate employee's gross weekly pay: _____</p> <p><input type="checkbox"/> Primary duty is the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. Indicate the field of science or learning: Describe the work that requires advanced knowledge, including consistent exercise of discretion and judgment.</p>
<input type="checkbox"/>	<p>EMPLOYEE MEETS EXEMPTION AS A <u>CREATIVE PROFESSIONAL</u> AND IS PAID AT LEAST \$455 PER WEEK ON A SALARIED BASIS. Indicate employee's gross weekly pay: _____</p> <p><input type="checkbox"/> Primary duty involves performing work requiring invention, imagination, originality or talent. Briefly describe the invention, imagination, originality or talent required in performing the job.</p>
<input type="checkbox"/>	<p>EMPLOYEE MEETS EXEMPTION AS A <u>HIGHLY COMPENSATED EMPLOYEE</u>.</p> <p><input type="checkbox"/> Total annual compensation is at least \$100,000 per year.</p> <p><input type="checkbox"/> Performs one or more duties identified in the</p> <p style="padding-left: 20px;"><input type="checkbox"/> Executive exemption <input type="checkbox"/> Administrative exemption <input type="checkbox"/> Professional exemption</p> <p>Identify the duty/duties performed in the appropriate exemption section(s) above.</p>
<input type="checkbox"/>	<p>EMPLOYEE MEETS EXEMPTION AS A <u>COMPUTER EMPLOYEE</u> AND IS PAID AT LEAST \$455 PER WEEK ON A SALARIED BASIS, OR \$27.63 PER HOUR. Indicate employee's gross weekly/hourly pay: _____</p> <p><input type="checkbox"/> Primary duty includes:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Application of system analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications. <input type="checkbox"/> Design, development, analysis, creating, testing or modifying computer system or programs, including prototypes, based on and related to user or system design specifications. <input type="checkbox"/> A combination of the duties described above, the performance of which requires the same level of skills.

V. DEPARTMENTS'/AGENCIES' RESPONSIBILITIES

1. Ensure position descriptions are maintained, reviewed and updated regularly to maintain currency and accuracy.
2. Determine the appropriate FLSA status of positions/employees (civil service and exempt from civil service) on an ongoing basis. The FLSA status of positions/employees should be reviewed and updated, if necessary, whenever there are changes in their duties and responsibilities and/or compensation.
 - Determine, maintain and record the correct FLSA status of positions/employees on the HRD-1 form and in the Position Management and Administer Workforce Modules of HRMS.
 - Maintain written justification of positions'/employees' FLSA status, as necessary.
3. Respond to inquiries regarding employees' FLSA status. Make appropriate adjustments, as applicable.
4. Inform employees of their status under FLSA, and of any changes.
5. Ensure that any pay calculations related to FLSA overtime are accurately reflected within the payroll change schedule or appropriate payroll system (e.g., DOT FAST, etc.)

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, [29 CFR Part 541](#).

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA 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 \$455 per week. Job titles do not determine exempt status. 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.

See other fact sheets in this series for more information on the exemptions for [executive](#), [administrative](#), [professional](#), [computer](#) and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Executive Exemption

To qualify for the executive employee exemption, all of 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 \$455 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.

Administrative Exemptions

To qualify for the administrative 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 \$455 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.

Professional Exemption

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 \$455 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, 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 \$455 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.

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 \$455 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:
 - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - 2) 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;
 - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 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.

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to [minimum wage](#) and [overtime](#) premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

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.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

NON-EXEMPT WORKER CATEGORIES

The FLSA exemptions do not apply to the following categories of workers. Please refer to the U. S. Department of Labor web page for more information.

541.3(a) Manual laborers and other blue collar workers. The exemptions apply only to white collar employees who meet salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other blue collar workers who perform work involving repetitive operations with their hands, physical skill and energy. Such non-exempt blue collar employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training.

FLSA-covered, non-managerial employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremens, construction workers and laborers are entitled to minimum wage and overtime premium pay under FLSA, and are not exempt under Section 13(a)(1) of the FLSA nor the regulations at 29 CFR Part 541, no matter how highly paid they might be.

541.3(b)(1) Police, firefighters and other first responders. The exemptions 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; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of laws; 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. However, an employee whose *primary duty* involves exempt administrative and/or exempt executive work may qualify for exemption.

541.3 Technologists and Technicians, such as engineering technicians, ultrasound technologists, licensed veterinary technicians, and other similar employees are not FLSA exempt because they generally do not meet the requirements for the learned professional exemption.

541.705 Trainees. The executive, administrative, professional and computer employee exemptions do not apply to employees training for employment in an executive, administrative, professional or computer employee capacity.

Glossary

Some of the terms and phrases used to determine FLSA status have particular meanings, in accordance with Title 29 of the Code of Federal Regulations, Part 541. These terms are defined here to help you better understand how the regulations apply to specific employment situations.

Change in status

A tangible employment action; a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.

Covered

A covered employee is one who is subject to the FLSA and therefore entitled to its minimum wage, overtime pay, recordkeeping and child labor protections.

Customarily and regularly

A frequency that must be greater than occasional, but which may be less than constant. Tasks or work performed "customarily and regularly" includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

Discretion and independent judgment

In general, 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. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.

The exercise of discretion and independent judgment implies that one has authority to make an independent choice, free from immediate direction or supervision. However, discretion and independent judgment can be exercised even if the decision or recommendation is reviewed at a higher level. Thus, the term "discretion and independent judgment" does not require that the decisions being made have to be final or free from review. The fact that one's decisions may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that one is not exercising discretion and independent judgment.

Discretion and independent judgment with respect to matters of significance

The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to:

- 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.

An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly.

Enterprise or recognized subdivision

A recognizable subpart within an employer's larger operation that has a permanent status and a continuing function. For example, a large employer's human resources department might have subdivisions for labor relations, pensions and other benefits, equal employment opportunity, and personnel management, each of which has a permanent status and function.

When an enterprise has more than one establishment (or branch), each establishment (branch) may be a recognized subdivision of the enterprise. A recognized department or subdivision does not need to be physically located within the employer's establishment and may move from place to place and/or may consist of employees drawn from other recognized units or from a pool of available employees (e.g., a construction crew which moves from job to job).

Exempt

Under the Regulations, Part 541, an exempt employee is one who is not entitled to the minimum wage or overtime pay protections of the FLSA.

Field of science or learning

The phrase "field of science or learning" includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and

other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades which are not a field of science or learning.

Management

For purposes of the executive exemption criteria, "management" generally includes, but is not limited to, activities such as:

- interviewing, selecting, and training of employees;
- setting and adjusting their rates of pay and hours of work;
- directing the work of employees;
- maintaining production or sales records for use in supervision or control;
- appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status;
- handling employee complaints and grievances;
- disciplining employees;
- planning the work;
- determining the techniques to be used;
- apportioning the work among the employees;
- determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked or sold;
- controlling the flow and distribution of materials or merchandise and supplies;
- providing for the safety and security of the employees or the property;
- planning and controlling the budget; and
- monitoring or implementing legal compliance measures.

Management or general business operations

For purposes of the administrative exemption criteria, "management or general business operations" means work directly related to assisting with the running or servicing of the business and includes, but is not limited to, 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; and
- legal and regulatory compliance.

This illustrative list shows types of functional areas or departments typically considered administrative in nature. It is not intended as a complete list of exempt areas, nor is it intended as a listing of specific jobs. Rather, the list shows functional areas or departments that generally relate to management and general business operations, although each case must be examined individually. Within such areas or departments, it is still necessary to analyze the level and nature of the work in order to assess whether the administrative exemption applies (i.e., does the particular employee exercise discretion and independent judgment as to matters of significance?).

Management or general business operations of his or her employer's customers

This includes work as described under "Management or general business operations" performed on behalf of the customers of the employee's employer. For example, a tax advisor or a marketing consultant employed by a firm which furnishes such services to its customers or clients for a fee.

Nonexempt

A nonexempt employee is one who is entitled to the minimum wage and/or overtime pay protections of the FLSA.

Particular weight

To determine whether an employee's suggestions and recommendations are given "particular weight," factors to be considered include, but are not limited to, whether it is part of the employee's job duties to make suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon.

Primary duty

The term "primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to:

- the relative importance of the major or most important duty as compared with other types of duties;
- the amount of time spent performing the major or most important duty;
- the employee's relative freedom from direct supervision; and

- the relationship between the employee's salary and the wages paid to other employees for performance of similar work.

The amount of time spent performing the specific duty can be a useful guide in determining whether such work is the primary duty of an employee. Thus, employees who spend more than 50 percent of their time performing a specific duty will generally satisfy the primary duty requirement. Time alone, however, is not the sole test, and nothing requires that exempt employees spend more than 50 percent of their time performing a specific duty. Employees who do not spend more than 50 percent of their time performing their major or most important duty may nonetheless meet the primary duty requirement if the other factors (listed above) support such a conclusion.

Recognized field of artistic or creative endeavor

Includes such fields as music, writing, acting and the graphic arts.

Salary

A predetermined amount of pay that constitutes all or part of the employee's compensation for the pay period. This predetermined amount is a fixed amount and may not be reduced based on the quality or quantity of the work performed. A salary is generally expressed as an amount paid per week, per month or per year.

For purposes of the Regulations, Part 541, the employee must earn the minimum required salary of \$455 per week "free and clear" or exclusive of "board, lodging or other facilities."

Two or more other employees

Generally a total of 80 employee hours of work. One full-time (40 hours per week) and two half-time employees (20 hours per week), for example, are equivalent to two full-time employees. Four half-time employees are also equivalent.

In industries where the established standard defining full-time schedules is 37 ½ hours or 35 hours per week, two or more other employees may be defined as 75 or 70 hours, respectively.

Source: <http://www.dol.gov/elaws/esa/flsa/overtime/glossary.htm>

Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, [29 CFR Part 541](#).

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA 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 \$455 per week. Job titles do not determine exempt status. 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.

See other fact sheets in this series for more information on the exemptions for [executive](#), [administrative](#), [professional](#), [computer](#) and [outside sales](#) employees.

Salary Basis Requirement

To qualify for exemption, employees generally must be paid at not less than \$455 per week on a salary basis. These salary requirements do not apply to outside sales employees, teachers, and employees practicing law or medicine. Exempt computer employees may be paid at least \$455 on a salary basis *or* on an hourly basis at a rate not less than \$27.63 an hour.

Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee's predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a "salary basis." If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

Circumstances in Which the Employer May Make Deductions from Pay

Deductions from pay are permissible when an exempt employee: is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness; to offset amounts employees receive as jury or witness fees, or for military pay; for penalties imposed in good faith for infractions of safety rules of major significance; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions. Also, an employer is not required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.

Effect of Improper Deductions from Salary

The employer will lose the exemption if it has an “actual practice” of making improper deductions from salary. Factors to consider when determining whether an employer has an actual practice of making improper deductions include, but are not limited to: the number of improper deductions, particularly as compared to the number of employee infractions warranting deductions; the time period during which the employer made improper deductions; the number and geographic location of both the employees whose salary was improperly reduced and the managers responsible; and whether the employer has a clearly communicated policy permitting or prohibiting improper deductions. If an “actual practice” is found, the exemption is lost during the time period of the deductions for employees in the same job classification working for the same managers responsible for the improper deductions.

Isolated or inadvertent improper deductions will not result in loss of the exemption if the employer reimburses the employee for the improper deductions.

Safe Harbor

If an employer (1) has a clearly communicated policy prohibiting improper deductions and including a complaint mechanism, (2) reimburses employees for any improper deductions, and (3) makes a good faith commitment to comply in the future, the employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing the improper deductions after receiving employee complaints.

Fee Basis

Administrative, professional and computer employees may be paid on a “fee basis” rather than on a salary basis. If the employee is paid an agreed sum for a single job, regardless of the time required for its completion, the employee will be considered to be paid on a “fee basis.” A fee payment is generally paid for a unique job, rather than for a series of jobs repeated a number of times and for which identical payments repeatedly are made. To determine whether the fee payment meets the minimum salary level requirement, the test is to consider the time worked on the job and determine whether the payment is at a rate that would amount to at least \$455 per week if the employee worked 40 hours. For example, an artist paid \$250 for a picture that took 20 hours to complete meets the minimum salary requirement since the rate would yield \$500 if 40 hours were worked.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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Fact Sheet #17B: Exemption for Executive Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, [29 CFR Part 541](#).

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA 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 \$455 per week. Job titles do not determine exempt status. 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.

See other fact sheets in this series for more information on the exemptions for [administrative](#), [professional](#), [computer](#) and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Executive Exemption

To qualify for the executive employee exemption, all of 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 \$455 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.

Primary Duty

"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Management

Generally, "management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity

and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

Department or Subdivision

The phrase “a customarily recognized department or subdivision” is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function.

Customarily and Regularly

The phrase “customarily and regularly” means greater than occasional but less than constant; it includes work normally done every workweek, but does not include isolated or one-time tasks.

Two or More

The phrase “two or more other employees” means two full-time employees or their equivalent. For example, one full-time and two half-time employees are equivalent to two full-time employees. The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. For example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each supervisor directs the work of two of those workers.

Particular Weight

Factors to be considered in determining whether an employee’s recommendations as to hiring, firing, advancement, promotion or any other change of status are given “particular weight” include, but are not limited to, whether it is part of the employee’s job duties to make such recommendations, and the frequency with which such recommendations are made, requested, and relied upon. Generally, an executive’s recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include occasional suggestions. An employee’s recommendations may still be deemed to have “particular weight” even if a higher level manager’s recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee’s change in status.

Exemption of Business Owners

Under a special rule for business owners, an employee who owns at least a bona fide 20-percent equity interest in the enterprise in which employed, regardless of the type of business organization (e.g., corporation, partnership, or other), and who is actively engaged in its management, is considered a bona fide exempt executive.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 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.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/contacts/state_of.htm.

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Fact Sheet #17C: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, [29 CFR Part 541](#).

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA 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 \$455 per week. Job titles do not determine exempt status. 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.

See other fact sheets in this series for more information on the exemptions for [executive](#), [professional](#), [computer](#) and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Administrative Exemption

To qualify for the administrative 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 \$455 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.

Primary Duty

"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Directly Related to Management or General Business Operations

To meet the "directly related to management or general business operations" requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example from working on a manufacturing production line or selling a product in a retail or service establishment. Work "directly related to management or general business operations" includes, but is not limited to, 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.

Employer's Customers

An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, employees acting as advisors or consultants to their employer's clients or customers — as tax experts or financial consultants, for example — may be exempt.

Discretion and Independent Judgment

In general, 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. The term must be applied in the light of all the facts involved in the employee's particular employment situation, and implies that the employee has authority to make an independent choice, free from immediate direction or supervision. Factors to consider include, but are not limited to: 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; 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, and other factors set forth in the regulation. The fact that an employee's decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.

Matters of Significance

The term "matters of significance" refers to the level of importance or consequence of the work performed. An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

Educational Establishments and Administrative Functions

The administrative exemption is also available to employees compensated on a salary or fee basis at a rate not less than \$455 a week, or on a salary basis which is at least equal to the entrance salary for teachers in the same educational establishment, and whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment. Academic administrative functions include operations directly in the field of education, and do not include jobs relating to areas outside the educational field. Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the various subject matter departments; academic counselors and other employees with similar responsibilities. Having a primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment includes, by its very nature, exercising discretion and independent judgment with respect to matters of significance.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 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.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/contacts/state_of.htm.

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Fact Sheet #17D: Exemption for Professional Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, [29 CFR Part 541](#).

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA 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 \$455 per week. Job titles do not determine exempt status. 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.

The specific requirements for exemption as a bona fide professional employee are summarized below. There are two general types of exempt professional employees: learned professionals and creative professionals.

See other fact sheets in this series for more information on the exemptions for [executive](#), [administrative](#), [computer](#) and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Learned Professional Exemption

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 \$455 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.

Primary Duty

"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Work Requiring Advanced Knowledge

“Work requiring advanced knowledge” means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment. Professional work is therefore distinguished from work involving routine mental, manual, mechanical or physical work. A professional employee generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

Field of Science or Learning

Fields of science or learning include law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other occupations that have a recognized professional status and are distinguishable from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type, but is not in a field of science or learning.

Customarily Acquired by a Prolonged Course of Specialized Intellectual Instruction

The learned professional exemption is restricted to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best evidence of meeting this requirement is having the appropriate academic degree. However, the word “customarily” means the exemption may be available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. This exemption does not apply to occupations in which most employees acquire their skill by experience rather than by advanced specialized intellectual instruction.

Creative Professional Exemption

To qualify for the **creative 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 \$455 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.

Invention, Imagination, Originality or Talent

This requirement distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy. Exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee. Whether the exemption applies, therefore, must be determined on a case-by-case basis. The requirements are generally met by actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, novelists, and others as set forth in the regulations. Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality or talent. Journalists are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product.

Recognized Field of Artistic or Creative Endeavor

This includes such fields as, for example, music, writing, acting and the graphic arts.

Teachers

Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers. The salary and salary basis requirements do not apply to bona fide teachers. Having a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge includes, by its very nature, exercising discretion and judgment.

Practice of Law or Medicine

An employee holding a valid license or certificate permitting the practice of law or medicine is exempt if the employee is actually engaged in such a practice. An employee who holds the requisite academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession. The salary and salary basis requirements do not apply to bona fide practitioners of law or medicine.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 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.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/contacts/state_of.htm.

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Fact Sheet #17H: Highly-Compensated Workers and the Part 541-Exemptions Under the Fair Labor Standards Act (FLSA)

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hour worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 in a workweek. However, Section 13(a)(1) of the FLSA 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 exempts certain [computer](#) employees. To qualify for exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week.

Highly-Compensated Workers

The regulations contain a special rule for “highly-compensated” workers who are paid total annual compensation of \$100,000 or more. A highly compensated employee is deemed exempt under Section 13(a)(1) if:

1. The employee earns total annual compensation of \$100,000 or more, which includes at least \$455 per week paid on a salary basis;
2. The employee’s primary duty includes performing office or non-manual work; and
3. The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Thus, for example, an employee may qualify as an exempt highly-compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.

Total Annual Compensation

The required total annual compensation of \$100,000 or more may consist of commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period, but does not include credit for board or lodging, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits.

Make-up Payments and Prorating

There are special rules for prorating the annual compensation if employees work only part of the year, and which allow payment of a single lump-sum, make-up amount to satisfy the required annual amount at the end of the year and similar make-up payments to employees who terminate before the year ends.

Customarily and Regularly

“Customarily and regularly” means greater than occasional but may be less than constant, and includes work normally and recurrently performed every workweek but does not include isolated or one-time tasks.

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Fact Sheet #17E: Exemption for Employees in Computer-Related Occupations Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) for employees in the computer field under Sections 13(a)(1) and 13(a)(17) of the [FLSA](#) and Regulations [29 CFR Part 541](#).

The FLSA requires that most employees in the United States be paid at least the [Federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) and Section 13(a)(17) of the FLSA provide an exemption from both [minimum wage](#) and [overtime pay](#) for computer systems analysts, computer programmers, software engineers, and other similarly skilled workers in the computer field who meet certain tests regarding their job duties and who are paid at least \$455 per week on a salary basis or paid on an hourly basis, at a rate not less than \$27.63 an hour.

Job titles do not determine exempt status. In order for this exemption to apply, an employee's specific job duties and compensation must meet all the requirements of the Department's regulations. The specific requirements for the computer employee exemption are summarized below.

See other fact sheets in this series for more information on the exemptions for [executive](#), [administrative](#), [professional](#), and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

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 at a rate not less than \$455 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:
 1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 2. 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;
 3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-

aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt under the computer employee exemption.

Primary Duty

“Primary duty” means the principal, main, major or most important duty that the employee performs. Determination of an employee’s primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee’s job as a whole.

Where to Obtain Additional Information

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