

FLSA Job Duties Test

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 (1) at a rate not less than \$684 per week;
- The employee's primary duty (2) 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 Exemption

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

- The employee must be compensated on a salary (1) or fee basis at a rate not less than \$684 per week;
- The employee's primary duty (2) must be the performance of office or non-manual work directly related to the management or general business operations (3) of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment (4) with respect to matters of significance.

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 (1) or fee basis at a rate not less than \$684 per week;
- The employee's primary duty (2) 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 (5); and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

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 (6), 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.

NOTE: The salary requirements of the regulation do not apply to the outside sales exemption. An employee who does not satisfy the requirements of the outside sales exemption may still qualify as an exempt employee under one of the other exemptions allowed by Section 13(a)(1) of the FLSA and the Part 541 regulations if all the criteria for the exemption is met.

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 (1) or fee basis at a rate not less than \$684 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.

NOTE: 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.

Definitions

1. Salary basis means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis.
2. 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.
3. Directly related to management or general business operations requirement means 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.
4. 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.
5. 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.
6. Sales include any sale, exchange, contract to sell, consignment for sales, shipment for sale, or other disposition. It includes the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property.