

## **Fact Sheet on Exempt Overtime Status**

### **Who is exempt?**

Under the Fair Labor Standards Act (FLSA), an employee can be exempt from minimum wage and overtime requirements if the employee is a bona fide executive, administrative, professional, or outside sales employee. Some computer employees are also exempt.

- In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department of Labor's regulations.
- Job titles do NOT determine exempt status.
- To qualify for exemption, employees generally must be paid at a rate 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.
- 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. Subject to some exceptions, 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.
- 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."
- Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more may also be exempt from the FLSA if they perform at least one of the duties of an exempt executive, administrative or professional employee.

### **Executive Exemption**

To qualify for the executive exemption, ALL of the following tests must be met:

- 1) The employee must be compensated on a salary basis at a rate not less than \$455 per week;
- 2) The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- 3) The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent (for example, two half-time employees are equivalent to one full-time employee); AND
- 4) 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.

- “Customarily and regularly” includes work normally done every week, but does not include isolated or one-time tasks.
- The employee’s suggestions and recommendations as to hiring, etc., cannot just be occasional suggestions.
- Under a special rule for business owners, an employee who owns at least a 20 percent equity interest in the enterprise in which employed, and who is actively engaged in its management, is considered an exempt executive.

### **Administrative Exemptions**

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

- 1) The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week;
- 2) 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
- 3) 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:

- 1) The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week;
  - 2) The employee’s primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominately intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
  - 3) The advanced knowledge must be in a field of science or learning; AND
  - 4) The advanced knowledge must be 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.
  - According to the Department of Labor, “advanced knowledge” cannot be attained at the high school level.

To qualify for the *creative professional* employee exemption, BOTH of the following tests must be met:

- 1) The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week; AND
  - 2) 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.
- The requirements are generally met by actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, novelists, and others as set forth in the regulations.

### **Outside Sales Exemption**

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

- 1) The employee's primary duty must be making sales, 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
  - 2) The employee must be customarily and regularly engaged away from the employer's place or places of business.
- An outside sales employee makes sales at the customer's place of business, or, if selling door-to-door, at the customer's home.

### **Computer Employee Exemption**

- Employees who are employed as computer systems analysts, programmers, software engineers or other similar work may qualify for the computer employee exemption.
- 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 computer employee exemption does NOT include employees engaged in the manufacture or repair of computer hardware and related equipment. This exemption also does not apply to employees whose work simply requires the use of a computer.

When 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/esa/contacts/state\\_of.htm](http://www.dol.gov/esa/contacts/state_of.htm).

More information, and fact sheets for exemptions in specific industries are available at <http://www.dol.gov/esa/whd/fact-sheets-index.htm>.

*This fact sheet does not constitute legal advice, and you should consider consulting an attorney about any laws and regulations that are applicable in your state, locality or particular type of business.*