

History of 29 CFR Part 541

The Fair Labor Standards Act (FLSA) generally requires covered employers to pay their employees at least the federal minimum wage (which currently is \$5.15 an hour), and overtime premium pay of time-and-one-half the regular rate of pay for all hours worked over 40 in a workweek. However, the FLSA includes a number of exemptions from the minimum wage and overtime requirements. Section 13 (a)(1) of the FLSA, codified at 29 USC 213 (a)(1), exempts from both minimum wage and overtime pay “any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of an outside salesman.*

*The FLSA does not define the terms “executive,” “administrative,” “professional” or “outside salesman.” However, pursuant to Congress’ grant of rulemaking authority, implementing regulations have been issued, at 29 CFR Part 541, defining the scope of the section 13 (a)(1) exemptions. Because the FLSA delegates to the Secretary of Labor the power to define and delimit the specific terms of the exemptions through notice-and-comment rulemaking, the regulations so issued have the binding effect of law.

- 1938 Section 13 (a)(1) was included in the original FLSA of 1938. 29 CFR Part 541 was issued later that year.
- 1940 Duties test revised – Stein Report
- 1949 Duties test revised – Weiss Report
- 1954 Salary Basis test updated
- 1958 Salary levels revised – Kantor Report
- 1961 Congress eliminated language limiting exemptions in retail to “local retailing capacity” to cover all retail and service enterprises. Employees in these positions could still qualify as exempt executive, administrative or professional employees if they met the qualifications for these exemptions, and Congress relaxed the duties tests solely to make it easier for such firms to meet the exemption requirements.
- 1966 Teachers and academic administrative personnel were added to exemptions when elementary and secondary schools were made subject to FLSA.
- 1972 Education Amendments of 1972 made the Equal Pay provisions (section 6 (d) of the FLSA) applicable to employees who were otherwise exempt from Section (a) (1).
- 1975 Salary levels updated – intended to be interim adjustment

- 1981 Revisions to increase the salary levels issued at the end of the Carter Administration were stayed indefinitely by the incoming Reagan Administration.
- 1985 Based on petitions from industry groups, the DOL began a more comprehensive review leading to an Advanced Notice of Rulemaking that reopened the public comment period and broadened the review to all aspects of the regulations.
- 1990 New regulations permitted computer systems analysts, computer programmers, software engineers and similarly skilled professional workers to be exempt, including those paid on an hourly basis if paid at least six-and-one-half times the minimum wage (\$4.25), or \$27.63.
- 1992 Modified the exemption requirements stating that otherwise exempt public sector employees do not lose exempt status under a regulated public sector pay and leave program that requires partial-day or hourly deductions from pay for employee absences not covered by accrued leave, or for budget-driven furloughs.
- 1996 The compensation test for computer-related employees was capped at \$27.63 an hour when Congress increased the minimum wage to its current \$5.15 rate and enacted the new section 13 (a) (17) exemptions for such computer employees.
- 1999 Review by General Accounting Office (GAO) recommended that the Secretary of Labor perform a comprehensive review and update.
- 2002 DOL convened series of stakeholder meetings asking for suggestions from over 40 interest groups representing employees and employers.
- 2003 DOL proposed rules to define and delimit the exemptions for executive, administrative, professional, outside sale, and computer employees; accepted public comments on proposed rules. Senate and House voted on measures to block DOL from making changes to the FLSA. Congressional and labor union opponents ceased efforts to block changes.
- 2004 August 23, 2004 – New “white-collar” exemption tests went into effect. After a 120-day implementation period, employers were expected to be in compliance with the changes that appeared in the *Federal Register* on April 23, 2004. Changes included overtime protection for all “white-collar” employees earning less than \$23,660, “blue-collar” workers, police officers, fire fighters, paramedics, emergency medical technicians and licensed practical nurses, and exemption for a “highly compensated employee” earning \$100,000 in total compensation that may not meet all of the standards for exemption as an executive.