

## White Paper "White Collar" Exemptions

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One of the most feared tasks for a new total rewards professional is exemption testing for compliance with the Fair Labor Standards Act (FLSA). This step-by-step tool is designed to simplify the testing process for what is commonly referred to as "white-collar exemptions" (29 CFR Part 541). Please refer to the Department of Labor (DOL), Wage and Hour Division, for criteria on other less common exemptions at <http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm>.

FLSA requires that all employees, unless determined to be exempt, must be paid minimum wage and receive overtime pay for all hours worked over 40 in the designated workweek. To determine if an employee is exempt from FLSA coverage, an employer must perform the FairPay exemption test. In the test, the DOL identifies specific characteristics of job duties that determine if an employee is covered by FLSA. Various links throughout this document will take you to the respective regulation or interpretations on the DOL Web site.

Follow the steps below to determine if an employee is exempt from FLSA coverage under 29 CFR Part 541:

### **STEP 1:** Determine the type of job the employee performs:

A) Executive

Management is the employee's primary duty (e.g., executive; officer; director; owner; etc.)

B) Administrative

Office or nonmanual work (e.g., manager; supervisor; administrator; etc.)

C) Professional

Performs work that requires highly advanced knowledge and education or performs work that is artistic, creative or original (e.g., attorney; physician; chemist; pharmacist; nurse; engineer; architect; teacher; author; musician; composer; actor; singer; etc.). While computer employees are included in the "professional" exemption regulation, they have been itemized separately in this document, as there is an additional test that can be performed to determine eligibility for exemption.

D) Computer Professionals

The application, design, development, analysis and/or modification of systems, networks, databases and/or programs are their primary duties (e.g., computer systems, network or database analyst; designer, developer or programmer; software engineer; etc.).

E) Outside Sales

Making sales or obtaining orders away from the employer's place of business (e.g., salesman; contract negotiator; etc.).

**STEP 2:** Based on your determination in STEP 1, find the matrix for the type of job the employee performs below. Review the test within the appropriate job type to determine if the employee is exempt.

The employee's job must satisfy the salary and duties criteria in order to be exempt.

A) Executive (e.g., executive; officer; director; owner; etc.)

	<u>Salary</u>		<u>Duties</u>
FairPay Test:	\$455/week	→	<p>Primary duty of managing the enterprise or a recognized department or subdivision; and</p> <p>Customarily and regularly directs the work of two or more other employees (or their equivalent)</p> <p>Has the authority to hire or fire other employees (or recommend as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight)</p>

Does the employee meet the salary test AND duties test?

If yes, the employee is exempt. If no, the employee is covered by FLSA and is nonexempt.

B) Administrative (e.g., manager; supervisor; administrator; etc.)

	<u>Salary</u>		<u>Duties</u>
FairPay Test:	\$455/week	→	<p>Primary duty of performing office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers; and</p> <p>Exercises discretion and independent judgment with respect to matters of significance</p>

Does the employee meet the salary test AND duties test?

If yes, the employee is exempt. If no, the employee is covered by FLSA and is nonexempt.

C) Professional (e.g., attorney; physician; chemist; pharmacist; nurse; engineer; architect; teacher; author; musician; composer; actor; singer; etc.)

Learned Professional:

	<u>Salary</u>		<u>Duties</u>
FairPay Test:	\$455/week	→	<p>Primary duty of 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; and</p> <p>Advanced knowledge must be in a field of science or learning; and</p> <p>Advance knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction</p>

Creative Professional:

	<u>Salary</u>		<u>Duties</u>
FairPay Test:	\$455/week	→	<p>Primary duty of the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic endeavor</p>

Does the employee meet the salary test AND duties test of either the learned professional or creative professional?

If yes, the employee is exempt. If no, the employee is covered by FLSA and is nonexempt.

D) Computer Professional (e.g., computer systems, network or database analyst; designer, developer or programmer; software engineer; etc.)

	<u>Salary/Rate</u>		<u>Duties</u>
FairPay Test:	\$455/week or \$27.63/hour*	→	<p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field performing the following duties:</p> <p>(A) Application of systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional applications; OR</p> <p>(B) 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</p> <p>(C) Design, documentation, testing, creation or modification of computer programs related to machine operating systems; OR</p> <p>(D) A combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills</p>

\*The rate of \$27.63 originally was calculated by taking the minimum wage rate of \$4.25 and multiplying by 6.5 times. The minimum wage rate of \$4.25 was the rate in effect when Public Law 101-583 was enacted Nov. 15, 1990, amending FLSA. It is no longer necessary to calculate 6.5 times the minimum wage rate because FLSA has been amended to specifically require a minimum hourly rate of \$27.63 to meet the criteria for exemption.

Does the employee meet the salary/rate test AND duties test?

If yes, the employee is exempt. If no, the employee is covered by FLSA and is nonexempt.

E) Outside Sales Employees (e.g., salesman; contract negotiator; etc.)

	<u>Salary</u>		<u>Duties</u>
FairPay Test:	None required	→	<p>Primary duty of making sales (any sale, exchange, contract to sell, consignment for sales, shipment for sale or other disposition including the transfer of title to tangible property, and in certain cases of tangible and valuable evidences of intangible property), 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</p> <p>The employee must be customarily and regularly engaged away from the employer's place or places of business</p>

Does the employee meet the salary test AND duties test?

If yes, the employee is exempt. If no, the employee is covered by FLSA and is nonexempt.

For more information regarding FLSA and other less common exemptions, please visit <http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm>.

**Note:** This White Paper represents a general overview for anyone researching this white paper topic. WorldatWork cautions that there is a wide range of practices related to this subject. WorldatWork neither endorses specific surveys or practices that may have been highlighted in this paper. We are providing this information with the understanding that WorldatWork is not engaged directly or by implication in rendering legal, accounting or other related professional services. WorldatWork will do its best to choose resources and Web sites that are appropriate and informative but cannot guarantee the accuracy of the information found outside of the WorldatWork Web site. Additionally, WorldatWork is not responsible for material at sites linking to the WorldatWork homepage or other sections of the Web site. WorldatWork has numerous resources to help HR professionals and others find more information about this white paper topic.

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