

FLSA Exemption Review (Based on information at the DOL's FairPay Overtime Initiative)

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 highly compensated employees among others. To qualify for an 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 tests below describe the requirements in the regulations.

To use this test checklist fill in the date, the employee's name and title, check the exemption that applies and describe how/why each point in the exemption test is met.

Date \_\_\_\_\_ Title \_\_\_\_\_ Employee Name \_\_\_\_\_

**Executive Exemption**

- The employee must be compensated on a salary basis at a rate not less than \$455 per week.

Indicate salary \_\_\_\_\_

- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise.

Describe how duties meet the test \_\_\_\_\_

- The employee must customarily and regularly direct the work of at least two or more employees.

Describe positions supervised \_\_\_\_\_

- 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.

Describe how authority meets the test \_\_\_\_\_

**Highly Compensated Employee Exemption**

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

Describe how duties meet the test \_\_\_\_\_

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**Administrative Exemption**

- The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week.

Indicate salary

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- 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.

Describe how duties meet the test

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- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Describe how duties meet the test

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**Professional Exemption (learned professional)**

- The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week.

Indicate salary

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- 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.

Describe how duties meet the test

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- The advanced knowledge must be in a field of science or learning.

Describe the field of science or learning

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- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Describe how knowledge is acquired

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**Professional Exemption (creative professional)**

- The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week.

Indicate salary

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- The employee's primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or prolonged course of specialized intellectual instruction or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Describe how duties meet the test

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