

# FLSA White Collar Exemptions: Meeting the Duties Tests

Employees must pass three tests to be considered exempt:

1. **The Salary Level Test:** Does the employee make at least \$913 per week or \$47,476 annually?
2. **The Salary Basis Test:** Does the employee receive a guaranteed, preset amount of pay each pay period regardless of the amount of hours worked?
3. **The Primary Duties Test:** Do the employee's job duties include exempt duties, and does the employee spend more than 50% of her time performing exempt work?

If an employee fails even one test, the employee cannot be considered exempt.

The Fair Labor Standards Act ("FLSA") requires employees to be compensated for overtime, meaning employers must pay 1.5 times the normal rate of pay for all hours worked over 40 in one week. However, the FLSA provides exemptions from the general rule. Employees that are exempt are not entitled to overtime, and employers **do not** have to track their hours.

There are three main "white collar" exemptions to the FLSA: the executive, administrative, and professional exemptions.

## A. THE EXECUTIVE EXEMPTION

1. Employee must be compensated on a salary basis of not less than \$913/week
2. Employee's primary duty must be managing the enterprise or a customarily recognized department of the enterprise
3. Employee must customarily and regularly direct the work of at least 2+ full-time employees

4. Employee must have the authority to hire and fire, or give Employees may be exempt under the executive exemption if they interview, hire, and train employees, set employees' hours and wages, direct the work of employees, discipline employees, deal with employee complaints, or manage budgets. Employees are only eligible for the exemption if they supervise at least two employees who work 40 hours per week each and they have a role in the hiring/firing process.

## B. THE ADMINISTRATIVE EXEMPTION

1. Employee must be compensated on a salary basis of not less than \$913/week
2. 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 employer's customers
3. Employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

An employee may fall under the administrative exemption if the employee works on tasks related to budgeting, accounting, or taxes, financial services, insurance, purchasing, human sources, or public relations. Exempt employees must spend over 50% of their time performing office or non-manual work, meaning they likely cannot

be out working in the field. Administrative assistants do not usually fall within the administrative exemption unless they are able to exercise independent judgment.

### C. THE PROFESSIONAL EXEMPTION

#### The Learned Professional:

1. Employee must be compensated on a salary basis of not less than \$913/week
2. Employee's primary duty must be the performance of work requiring advanced knowledge that is predominantly intellectual in character and requires the consistent exercise of discretion and judgment
3. Advanced knowledge must be in a field of science or learning
4. Advanced knowledge must customarily be acquired in a prolonged course of specialized instruction

Employees that likely qualify under the learned professional exemption are certified public accounts, architects, and engineers. Employees usually require at least a bachelor's degree to qualify for this exemption. This exemption does not apply to the skilled trades.

#### The Creative Professional:

1. Employee must be compensated on a salary basis at a rate of not less than \$913/week
2. 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

Employees that likely qualify under the creative professional exemption are actors, musicians, illustrators, and novelists.

#### Bona Fide Professionals:

Teachers, academic administrative personnel, physicians, lawyers engaged in the practice of law, and judges are considered "bona fide professionals." Employees in these roles do not need to meet the salary level and salary basis tests as long as they satisfy the duties test.

There are significant benefits to classifying employees as exempt. But because violations of the FLSA can impose a substantial financial burden, employers should regularly confirm that their exempt employees still meet the requirements.

### FOR MORE INFORMATION

For more information regarding FLSA white collar exemptions, or to review your business' compliance with the exemption requirements, please contact any of the following MMWR attorneys:

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