

Fair Labor Standards Act

Presented by

John Hanes

Manager, Compensation & Classification

Kansas State University

785-532-1869

johnhanes@k-state.edu

As amended from the original developed by the

U.S. Department of Labor

Wage and Hour Division



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The Fair Labor Standards Act (FLSA) is the federal law of broadest application governing minimum wage, overtime pay, and youth employment. The Wage and Hour Division of the U.S. Department of Labor enforces the FLSA. In addition, the Wage and Hour Division also enforces:

- The Family and Medical Leave Act
- The Migrant and Seasonal Agricultural Worker Protection Act
- The Employee Polygraph Act
- The Garnishment Provisions of the Consumer Credit Protection Act
- The Davis-Bacon and Related Acts
- The McNamara-O'Hara Service Contract Act
- Temporary Worker Provisions of the Immigration and Nationality Act

For more information regarding these laws, call the Wage and Hour Division's toll-free line at 1-866-4USWAGE (1-866-487-9243). Information is also available on the Internet at www.wagehour.dol.gov.

Overtime



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See: 29 U.S.C. 207; 29 CFR 778 Overtime Compensation

Overtime Pay

Covered, non-exempt employees must receive one and one-half times the regular rate of pay for all hours worked over forty in a workweek



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There is no limit on the number of hours employees aged 16 and older may work in any workday or workweek. The FLSA does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest. Also, the FLSA does not require overtime pay over 8 hours in a day, except in certain circumstances for hospital and residential care establishments.

Nothing in the FLSA relieves an employer of any obligation he or she may have by contract or other Federal or State law.

Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned. The employer and employee cannot agree to waive overtime payment that is due under the FLSA.

See also: Fact Sheet No. 023 Overtime Pay Requirements Of the Fair Labor Standards Act (FLSA); WH 1325 Overtime Compensation Under the Fair Labor Standards Act.

Overtime Issues

- Each workweek stands alone
- Regular rate
 - Payments excluded from rate
 - Payments other than hourly rates
 - Tipped Employees
- Deductions



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If an employee who is paid an hourly rate works overtime hours (whether or not the employer recognized them as overtime hours), the employer must pay the employee for all hours worked at the agreed rate plus at least an extra half of that rate for all overtime hours.

Workweek

- Compliance is determined by workweek, and each workweek stands by itself
- Workweek is 7 consecutive 24 hour periods (168 hours)



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Compliance with wage payment requirements is determined on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It does not need to be a calendar week and may begin on any day and at any hour of the day as set by the employer. Once established, the workweek remains fixed regardless of which hours an employee works. Averaging of hours over two or more weeks is not permitted.

Regular Rate

- | Is determined by dividing total earnings in the workweek by the total number of hours worked in the workweek
- | May not be less than the applicable minimum wage



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The regular rate includes **all earnings for employment except certain payments excluded by the FLSA**. Earnings may be determined on a **piece-rate, salary, commission**, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except statutory exclusions) in any workweek by the total number of hours actually worked.

See also: Fact Sheet No. 023 Overtime Pay Requirements of the Fair Labor Standards Act (FLSA).

Regular Rate Exclusions

- Sums paid as gifts
- Payments for time not worked
- Reimbursement for expenses
- Discretionary bonuses
- Profit sharing plans
- Retirement and insurance plans
- Overtime premium payments
- Stock options



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Some payments employees receive are not included when calculating total earnings for regular rate purposes.

See also: 29 U.S.C.207(e); 29 CFR 778; Fact Sheet No. 23 Overtime.

Regular Rate (RR)

Step 1: Total Straight Time Earnings (Minus
Statutory Exclusions) Divided By
Total Hours Worked = **Regular Rate**

Step 2: **Regular Rate** x .5 = Half Time Premium

Step 3: Half Time Premium x Overtime Hours
= Total Overtime Premium Due



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The FLSA does not require employers to pay employees on an hourly rate basis. Their earnings may be determined on a piece-rate, salary, commission, or some other basis, but in each case the overtime pay due must be computed on the basis of the hourly rate derived from these earnings. This is calculated by dividing the total pay for employment (except for the noted statutory exclusions) in any workweek by the total number of hours actually worked.

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the total straight time earnings when computing the overtime due.

See also: WH 1325 Overtime Compensation Under the Fair Labor Standards Act; Fact Sheet No. 023 Overtime Pay Requirements Of the Fair Labor Standards Act (FLSA).

Example: Hourly Rate + Production Bonus

Total Hours = 48
Hourly Rate = \$9.00
Bonus = \$10

48 hours x \$9.00=		\$432.00
Bonus	+	<u>10.00</u>
		\$442.00

\$442.00 / 48 hrs =		\$9.21 (Regular Rate)
\$9.21 x .5	=	\$4.61
\$4.61 x 8 hrs	=	\$36.88 (Overtime Due)



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When an employee is paid an hourly rate and a production bonus, the earnings from both the hourly rate and the bonus are added together when determining the total straight time earnings.

This amount is then divided by total hours worked to get the regular rate of pay for overtime purposes.

One-half of the regular rate is the premium amount due for each overtime hour.

See also: 29 CFR 778.209 Overtime Compensation.

Example: Different Hourly Rates

Janitor Rate	\$8.50	Janitor Hours	21
Cook Rate	\$9.00	Cook Hours	26

$$\begin{aligned}
 21 \text{ hours} \times \$8.50 &= \$178.50 \\
 26 \text{ hours} \times \$9.00 &= \$234.00 \\
 &\underline{\$412.50}
 \end{aligned}$$

$$\begin{aligned}
 \$412.50 / 47 \text{ hours} &= \$8.78 \text{ (Regular Rate)} \\
 \$8.78 \times 0.5 &= \$4.39 \\
 \$4.39 \times 7 \text{ hours} &= \$30.73 \text{ (Overtime Due)}
 \end{aligned}$$



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Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs to get the regular rate.

One-half of the regular rate is the premium amount due for each overtime hour.

See also: 29 CFR 778.115 Overtime Compensation; WH 1325 Overtime Compensation Under the Fair Labor Standards Act.

Example: Piece Rates

Piece Rate Earnings \$391.00 for 46 Hrs

Waiting Time Rate \$7.25 for 4 Hrs

Production Bonus \$12.50

46 hours = \$391.00

4 hours x \$7.25 = \$29.00

Production Bonus = \$12.50

\$432.50

\$432.50 / 50 hrs = \$8.65 (Regular Rate)

\$8.65 x 0.5 = \$4.33

\$4.33 x 10 hrs = \$43.30 (Overtime Due)



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When an employee is employed on a piece-rate basis, the regular rate of pay is computed by adding together the total earnings for the workweek from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions). This sum is then divided by the number of hours worked in the week for which such compensation was paid, to yield the pieceworker's "regular rate" for that week.

One-half of the regular rate is the premium amount due for each overtime hour.

See also: 29 CFR 778.111 Overtime Compensation.

Example: Salaried for Fixed Hours

Salary Earnings	\$420.00	(for a 40 hour workweek)
Hours Worked	48	
Regular Rate	\$10.50	(\$420/40 hours)
Overtime Rate	\$15.75	
Salary Equals	= \$420.00	
8 hours x \$15.75	= <u>\$126.00</u>	
Total Due	= \$546.00	



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If the employee is employed solely on a weekly salary basis, the regular rate of pay is computed by dividing the salary by the number of hours which the salary is intended to compensate.

Since the salary only covered 40 hours in this case, the employee is due **one and one-half times** the regular rate for the hours over 40.

See also: 29 CFR 778.113 Overtime Compensation.

Example: Fixed Salary for Fluctuating Hours

Fixed Salary **\$420.00** (for all hours worked)

Week 1 Hours Worked **49**

Regular Rate **\$8.57** (\$420 / 49 hours)

Additional Half-Time Rate **\$4.29**

Salary Equals **= \$420.00**

9 hours x \$4.29 **= \$38.61 (Overtime Due)**

Total Due **= \$458.61**



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The regular rate of an employee whose hours of work fluctuate from week to week and who is paid a stipulated salary with the clear understanding that the salary covers straight time pay for all hours worked (whatever their number and whether few or many) will vary from week to week. The regular rate is determined for each week by dividing the salary by the number of hours worked in the week. It cannot, of course, be less than the applicable minimum wage in any week. Since the salary includes the straight time pay for all hours worked, the employee is due additional half-time for the hours over 40 in the week.

Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole.

Employees paid a fixed salary for a fluctuating workweek must receive the full salary in weeks in which they work less than 40 hours.

See also: 29 CFR 778.114 Overtime Compensation; WH 1325 Overtime Compensation Under the Fair Labor Standards Act.

Example: Fixed Salary for Fluctuating Hours

Fixed Salary **\$420.00** (for all hours
worked)

Week 2 Hours Worked **41**

Regular Rate **\$10.24** (\$420 / 41 hours)

Additional Half-Time Rate **\$5.12**

Salary Equals **= \$420.00**

1 hour x \$5.12 **= \$5.12**

Total Due **= \$425.12**



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The regular rate of pay for an employee paid a fixed salary for fluctuating workweek is higher in weeks in which fewer hours are worked.

See also: 29 CFR 778.114 Overtime Compensation.

Example: Tipped Employee

Rate Employer Pays	\$2.13
Tip Credit Claimed	\$3.72
Regular Rate	\$5.85
Additional Half-Time Rate	\$2.93

50 Hours X \$5.85	= \$292.50
10 hours X \$2.93	= \$29.30
Total Due	= \$321.75 (less tip credit)
Tip Credit 50 x \$3.72	= \$186.00
Total Cash Wage Due	= \$135.75



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The regular rate for a tipped employee is determined by dividing the employee's total earnings (except statutory exclusions) in any workweek by the total number of hours actually worked. The regular rate of pay includes the amount of tip credit taken by the employer; however, any tips received by the employee in excess of the allowable tip credit are not included in the regular rate. An employer may not take a higher tip credit for an overtime hour than for a straight time hour.

If the employer furnishes any facilities to the employee, the reasonable cost or fair value of those facilities are included in the regular rate. Commissions and certain non-discretionary bonuses are also included in the regular rate.

See also: 29 CFR 531.60 Wage Payments Under the Fair Labor Standards Act of 1938.

Deductions in Overtime Workweeks



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Deductions for Board, Lodging and Facilities

- No limit on the amount deducted for the **reasonable cost** of board, lodging, or other facilities
- Items that are primarily for the benefit or convenience of the employer do not qualify as facilities
- Regular rate is calculated before deduction is taken



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Where the employer charges the employee for board, lodging, and facilities by taking a deduction from the employee's wages, the regular rate is determined before the deductions are made. There is no limit to the amount which may be deducted for these items, provided that the deductions are confined to the reasonable cost of the board, lodging and facilities furnished. Where the deductions are in amounts that exceed the "reasonable cost," the excess amount is handled the same as deductions for items other than "board, lodging or other facilities."

The term "other facilities" means items such as meals furnished at company restaurants; housing furnished; general merchandise bought at company stores; and fuel, electricity, water, and gas furnished for the employee's personal use.

Deductions for Items Other Than Board, Lodging, and Facilities

A deduction may be made if

- | The deduction is bona fide, and
- | It is made for particular items under a prior agreement, and
- | The purpose is not to evade statutory overtime requirements or other laws, and
- | It is limited to the amount above the highest applicable minimum wage for the first 40 hours



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Deductions that are prohibited by other laws (federal, state or local) are not bona fide. Deductions for amounts above the reasonable cost to the employer of furnishing a particular item to an employee are also not bona fide (e.g. furnishing items to employees at a profit or deductions for substandard housing).

In order for the deduction to be valid, the agreement to make the deductions must be reached before the employee performs the work that becomes subject to the deductions. The agreement must be specific concerning the particular items for which the deductions will be made, and the employee must know how the amount of the deductions will be determined. The employee must assent to the employer's deduction policy. The employee's assent to the policy may be written or unwritten; however, the employer bears the burden of proof that an employee has agreed to the deduction policy.

Deductions made only in overtime workweeks, or increases in prices charged during overtime workweeks compared to non-overtime workweeks, are considered to be manipulations to evade statutory overtime requirements and are prohibited.

Deductions are limited to the amount above the highest required minimum wage for the first forty hours. Time and a half the full regular rate (pre-deductions) must be paid for all statutory overtime hours.

Exemptions and Exceptions

There are numerous exemptions and exceptions from the minimum wage and/or overtime standards of the FLSA



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FLSA Sections 7 and 13 contain numerous exceptions (or exemptions) to the minimum wage and/or overtime requirements.

FLSA Section 7 contains overtime exceptions. This presentation includes the exception for certain commissioned sales employees in retail businesses. There are several other exceptions contained in Section 7. Among these are partial exceptions for hospitals and nursing homes and public sector police and fire employees.

FLSA Section 13(a) contains exceptions to both minimum wage and overtime. This presentation discusses the so-called “white collar” exemption. There are several other exceptions contained in section 13(a) including exceptions for certain amusement or recreational establishments, agricultural operations, and small newspapers.

FLSA Section 13(b) contains exceptions to overtime only. For example, there are exceptions for certain employees who transport property in interstate commerce, for certain employees of automobile dealerships, agricultural employees, taxicab drivers, and movie theater employees. This presentation does not discuss any of the Section 13(b) exceptions.

Additional information about these and other exceptions and exemptions can be obtained by visiting www.wagehour.dol.gov or calling 1-866-4US-WAGE.

“White Collar” Exemptions



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See FLSA Section 13(a)(1) and Section 13(a)(17); 29 CFR 541 Defining the Terms Executive, Administrative, Professional and Outside Salesman; Fact Sheet No. 017A Exemption For Executive, Administrative, Professional, & Outside Sales Employees Under The Fair Labor Standards Act (FLSA).

“White Collar” Exemptions

The most common FLSA minimum wage and overtime exemption -- often called the “541” or “white collar” exemption -- applies to certain

- Executive Employees
- Administrative Employees
- Professional Employees
- Outside Sales Employees
- Computer Employees



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If the requirements of this exemption are met, the employer is not required to (1) pay overtime to the exempt employee or (2) guarantee that the employee receives at least the minimum wage for each hour worked.

See also: 29 U.S.C. 213(a)(1); 29 CFR 541, WH Fact Sheet No. 017A Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA); 29 U.S.C. 213(a)(17).

Three Tests for Exemption

Salary Level

Salary Basis

Job Duties



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To qualify for exemption, employees must meet three tests for each exemption: An exempt employee must earn a minimum amount. The minimum amount must be paid on a salary basis. In addition, exempt employees must perform certain executive, administrative, professional, outside sales, or computer professional job duties set forth in the regulation.

Minimum Salary Level: \$455

- For most employees, the minimum salary level required for exemption is \$455 per week
- Must be paid “free and clear”
- The \$455 per week may be paid in equivalent amounts for periods longer than one week
 - **Biweekly:** **\$910.00**
 - **Semimonthly:** **\$985.83**
 - **Monthly:** **\$1,971.66**



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The minimum salary level required for exemption is \$455 per week, which must be paid “free and clear” – that is, the \$455 cannot include the value of any non-cash items that an employer may furnish to an employee, like board, lodging, or other facilities (for example, meals furnished to employees of restaurants). For employers that have adopted pay periods longer than one week, the equivalent of the \$455 per week salary level is \$910 for biweekly pay periods; \$985.83 for semimonthly pay periods; and \$1,971.66 for monthly pay periods.

See also: 29 CFR 541.600 Amount of Salary Required .

Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- Must be paid the full salary for any week in which the employee performs **any** work
- Need not be paid for any workweek when no work is performed



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Generally, “salary basis” means that an exempt employee must regularly receive, each pay period and on a weekly or less frequent basis, a “predetermined amount” of compensation that cannot be reduced because of variations in the quality or quantity of work performed. But for a few identified exceptions, the 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. However, exempt employees need not be paid for any workweek when they perform no work.

See also: 29 CFR 541.602 Salary Basis.

Deductions From Salary

- An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the businesses
- If the employee is ready, willing and able to work, deductions may not be made for time when work is not available



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An employee is not paid on a salary basis if the employer makes deductions from the predetermined salary, for example, for absences caused by the employer or because of the operating requirements of the business. If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

Permitted Salary Deductions

Seven exceptions from the “no pay-docking” rule

1. Absence from work for one or more full days for personal reasons, other than sickness or disability
2. Absence from work for one or more full days due to sickness or disability if deductions made under a bona fide plan, policy, or practice of providing wage replacement benefits for these types of absences
3. To offset any amounts received as payment for jury fees, witness fees, or military pay



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The regulations contain seven exceptions to this salary basis, “no pay-docking” rule. Employers may make deductions from salary of exempt employees in the following situations:

1. An absence from work for one or more full days for personal reasons, other than sickness or disability
2. An absence from work for one or more full days due to sickness or disability if deductions made under a bona fide plan, policy, or practice of providing wage replacement benefits for these types of absences
3. To offset any amounts received as payment for jury fees, witness fees, or military pay

Permitted Salary Deductions (continued)

Seven exceptions from the “no pay-docking” rule (cont.)

4. Penalties imposed in good faith for violating safety rules of “major significance”
5. Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of written workplace conduct rules
6. Proportionate part of an employee’s full salary may be paid for time actually worked in the first and last weeks of employment
7. Unpaid leave taken pursuant to the Family and Medical Leave Act



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4. Penalties imposed in good faith for violating safety rules of “major significance,” such as “no smoking” rules in explosive plants, oil refineries, and coal mines
5. Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of written workplace conduct rules, such as rules prohibiting sexual harassment or workplace violence
6. Proportionate part of an employee’s full salary may be paid for time actually worked in the first and last weeks of employment
7. Unpaid leave under the Family and Medical Leave Act

Effect of Improper Deductions

- An actual practice of making improper deductions from salary will result in the loss of the exemption
 - During the time period in which improper deductions were made
 - For employees in the same job classifications
 - Working for the same managers responsible for the actual improper deductions
- Isolated or inadvertent improper deductions, however, will not result in the loss of exempt status if the employer reimburses the employee



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What is the effect on an employee's exemption status if an employer makes improper deductions from the salary? If the facts show that the employer had an actual practice of making improper deductions from salary, the exemption will be lost, and overtime pay due for hours worked over 40 per week during the time period in which improper deductions were made, to employees in the same job classifications and who work for the same managers responsible for the actual improper deductions. Employees in other, different job classifications, or working for other, different managers, would not lose their exempt status. Isolated or inadvertent improper deductions, however, will not result in the loss of exempt status if the employer reimburses the employee for the improper deduction.

See also: 29 CFR 541.603 Effect of Improper Deductions from Salary.

Safe Harbor

- The exemption will not be lost if the employer:
 - Has a **clearly communicated** policy prohibiting improper deductions and including a complaint mechanism
 - Reimburses employees for any improper deductions; and
 - Makes a good faith commitment to comply in the future
- **Unless** the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints



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The regulations provide a safe harbor for employers who have a clearly communicated policy prohibiting improper deductions. If an employer (1) has such a clearly communicated policy which prohibits improper deductions and includes a complaint mechanism, (2) reimburses employees for any improper deductions, and (3) makes a good faith commitment to comply in the future, then the employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

Executive Duties

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight



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In addition to the salary requirements, the executive exemption applies only if the following three duties requirements are met: 1) the employee's primary duty must be management; 2) the employee must customarily and regularly direct the work of two or more employees; and 3) the employee must have the authority to hire or fire other employees, or have his/her suggestions and recommendations as to hiring, firing, advancement, promotion or any other change of status given particular weight. This is more protective than the former short test because of the additional "hire or fire" requirement.

20% Owner Executives

- The executive exemption also includes employees who
 - own at least a bona fide 20-percent equity interest in the enterprise
 - are actively engaged in management of the enterprise
- The salary level and salary basis requirements do not apply to exempt 20% equity owners



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The revised final regulations recognize certain business owners as exempt executives. Employees who own at least 20-percent equity in a business and are actively engaged in the management of the enterprise are exempt executives. There is no duties test for these equity owners.

Administrative Duties

- Primary duty is 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
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance



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The duties test for the administrative exemption applies only if: the employee's primary duty is 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 the employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. This test is substantially the same as the former short test for the administrative exemption.

Management or General Business Operations

- Tax
- Finance
- Accounting
- Budgeting
- Auditing
- Insurance
- Quality Control
- Purchasing
- Procurement
- Advertising
- Marketing
- Research
- Safety and Health
- Human Resources
- Employee Benefits
- Labor Relations
- Public and Government Relations
- Legal and Regulatory Compliance
- Computer Network, Internet, and Database Administration



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Work “directly related to management or general business operations” includes, but is not limited to, work in such areas as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; advertising; marketing; research; safety and health; human resources; public relations; legal and regulatory compliance; and similar activities.

Insurance Claims Adjusters

- Exempt status depends on actual job duties
- May be exempt if duties include
 - Interviewing insured, witnesses, and physicians;
 - Inspecting property damage
 - Reviewing factual information to prepare damage estimates
 - Evaluating and making recommendations regarding coverage of claims
 - Determining liability and total value of a claim;
 - Negotiating settlements
 - Making recommendations regarding litigation



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The regulations contain a number of examples to illustrate when employees may meet the duties requirements for the administrative exemption. For example, although exempt status depends on the actual job duties performed by the employee, insurance claims adjusters generally meet the duties requirements for the administrative exemption if they perform work such as interviewing insureds, witnesses, and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.

See also: Fact Sheet No. 017L Insurance Claims Adjusters and the Part 541 Exemptions under the Fair Labor Standards Act.

Financial Services

- May be exempt if duties include
 - Collecting and analyzing information regarding the customer's income, assets, investments or debts
 - Determining which financial products best meet the customer's needs and financial circumstances
 - Advising the customer regarding the advantages and disadvantages of different financial products
 - Marketing, servicing, or promoting the employer's financial products
- An employee whose primary duty is selling financial products does not qualify for the administrative exemption



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Financial services employees may meet the duties requirements for the administrative exemption if their duties include collecting and analyzing information regarding the customer's income, assets, investments, or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing, or promoting the employer's financial products. However, a financial services employee whose primary duty is selling financial products does not qualify for the administrative exemption.

See also: Fact Sheet No. 017M Financial Services Industry Employees and the Part 541 Exemptions Under the Fair Labor Standards Act.

Professional Duties

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction
- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor



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In addition to the salary requirements, the professional exemption applies only if the duty requirements are met. The primary duty must be the performance of work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Field of Science or Learning

Occupations with recognized professional status, as distinguished from the mechanical arts or skilled trades

Law	Accounting	Actuarial Computation
Theology	Teaching	Physical Sciences
Medicine	Architecture	Chemical Sciences
Pharmacy	Engineering	Biological Sciences



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Fields of science or learning are occupations with recognized professional status, as distinguished from the mechanical arts or skilled trades. Fields of science or learning include: law; theology; medicine; pharmacy; accounting; teaching; architecture; engineering; and the physical, chemical, or biological sciences.

Exempt Medical Professions

- Doctors
- Registered Nurses
- Registered or certified medical technologists
 - 3 years of pre-professional study in an accredited college or university, plus 1 year of professional study in an accredited school of medical technology
- Dental hygienists
 - 4 years of pre-professional and professional study in an accredited college or university
- Certified physician assistants
 - 4 years of pre-professional and professional study, including graduation from an accredited physician assistant program



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The learned professional exemption applies to any employee who holds a valid license or certificate permitting the practice of medicine, including osteopathic physicians, podiatrists, dentists and optometrists. The exemption is also available to an employee who holds the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program.

Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption. However, many registered nurses receive overtime pay because they are paid by the hour, not on a salary basis as required for exemption. Licensed practical nurses generally *do not* qualify as exempt learned professionals.

Registered or certified medical technologists, dental hygienists, and certified physician assistants also generally meet the duties requirements for the learned professional exemption if they successfully complete four years of study in an accredited college or university.

Other Commonly Exempt Professions

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Chefs
- Certified athletic trainers
- Licensed funeral directors or embalmers



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Other exempt learned professionals may include: lawyers, teachers, accountants, pharmacists, engineers, actuaries, chefs, certified athletic trainers, and funeral directors or embalmers, where the regulatory tests are satisfied, such as completion of a prolonged course of specialized intellectual instruction.

Additional Nonexempt Professions

- Licensed practical nurses
- Accounting clerks and bookkeepers who normally perform a great deal of routine work
- Cooks who perform predominantly routine mental, manual, mechanical or physical work
- Paralegals and legal assistants
- Engineering technicians



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Employees who do not meet the requirements for the learned professional exemption include: accounting clerks and bookkeepers who normally perform a great deal of routine work; cooks who perform predominantly routine mental, manual, mechanical, or physical work; paralegals and legal assistants; and engineering technicians.

Recognized Field of Artistic or Creative Endeavor

- Music
 - Musicians, composers, conductors, soloists
- Writing
 - Essayists, novelists, short-story writers, play writers
 - Screen play writers who choose their own subjects
 - Responsible writing positions in advertising agencies
- Acting
- Graphic Arts
 - Painters, photographers, cartoonists



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The recognized fields of artistic or creative endeavor include music, writing, acting and the graphic arts. Thus, exempt creative professionals include musicians, composers, conductors, novelists, screen writers, actors, painters, and photographers.

Computer Related Occupations

Primary duty is:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications
- The 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;
- The design, documentation, testing, creation, or modification of computer programs related to machine operating systems
- A combination of the above requiring the same level of skills, and



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Employees who qualify for this exemption work in computer systems analysis, programming, or related work. Trainees or employees in entry level positions who do not work independently do not typically qualify for exemption. Employees who are engaged in the operation or manufacture, repair, or maintenance of computers do not qualify for this exemption.

Employees whose work is dependent on computers (e.g., engineers, drafters, computer-aided design (CAD) operators), but who are not in computer systems analysis and programming occupations, are not included in this exemption.

See also: 29 U.S.C. 213(a)(17); 29 CFR 541.400; and http://www.dol.gov/esa/whd/FieldBulletins/FieldAssistanceBulletin2006_3.htm.

Computer Related Occupations

The employee must also receive either

- A guaranteed salary or fee of \$455 per week or more, or
- An hourly rate of not less than \$27.63 per hour



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Employees engaged in computer-related work must receive either the \$455 per week guaranteed salary or fee required for other exemptions or an hourly rate of at least \$27.63.

See also: 29 U.S.C. 213(a)(17); 29 CFR 541.3.

Outside Sales

- Primary duty is
 - Making sales or
 - Obtaining orders or contracts for services or facilities for consideration paid by customer and
- Customarily and regularly engaged away from the employer's place(s) of business in performing such primary duty
- No compensation test



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U.S. Wage and Hour Division

In order to be exempt as an outside sales employee, the employee's primary duty must be making sales or obtaining orders or contracts for services or use of facilities for which a consideration will be paid by the client or customer, and the employee must be customarily and regularly engaged away from the employer's place or places of business in performing these duties. Work performed that is incidental to and in conjunction with, or which furthers, the employee's own outside sales or solicitation efforts is considered exempt outside sales work, even when performed at the employer's establishment.

See also: 29 CFR 541.500 General Rules for Outside Sales Employees.

Exception for Retail Commissioned Sales Employees



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This exception is contained in Section 7(i) of the FLSA. See also: 29 CFR 779.410-779.419 The Fair Labor Standards Act as Applied to Retailers of Goods and Services; Fact Sheet No. 020 Employees Paid Commissions by Retail Establishments Who are Exempt Under Section 7(i) from Overtime under the Fair Labor Standards Act (FLSA)

Overtime Exception for Retail Commissioned Sales Employees

Employees of a retail or service establishment who are paid more than half their total earnings on a commission basis may be exempt from the overtime pay requirements of the FLSA



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Restaurants and hotels frequently charge banquet customers or large parties a percentage of the bill as a mandatory service charge. If part or all of that service charge is paid to service employees, the payment is normally considered a commission rather than a tip.

See also: Fact Sheet No. 020 Employees Paid Commissions by Retail Establishments Who are Exempt Under Section 7(i) from Overtime under the Fair Labor Standards Act (FLSA)

Requirements for Exception

- The employee must be employed by a retail or service establishment
- More than half the employee's total earnings in a representative period must represent commissions on goods or services
- Employee's total compensation divided by number of hours worked or regular rate must exceed one and one-half times the minimum wage



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See 29 U.S.C. 207(i)

Requirements for Exception

Unless all three conditions are met, the exception does not apply, and overtime premium pay must be paid for all hours worked over forty in a workweek at one and one-half times the regular rate of pay



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Accurate records of hours worked and earnings are needed in order for the employer to determine if the exception applies.

See also: Fact Sheet No. 020 Employees Paid Commissions by Retail Establishments Who are Exempt Under Section 7(i) from Overtime under the Fair Labor Standards Act (FLSA).

Retail Establishment

Retail and service establishments are defined as establishments 75% of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry



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Some examples of retail businesses are:

- Public parking lots
- Auto repair shops
- Trailer camps
- Cemeteries
- Automobile Dealership
- Hotels
- Restaurants
- Florists
- Theaters

Some examples of business that are not retail are:

- Accounting firms
- Ambulance services
- Airports
- Dentist/Doctor offices
- Labor Unions
- Laundries/Dry cleaners
- Gambling Establishments
- Lawyer's offices

Representative Period

- May be as short as one month, but must not be greater than one year
- Employer must select a representative period in order to determine if this condition has been met



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The employer must select a representative period of at least one month, but not more than one year, to test whether or not the employee is paid principally by commissions.

See also: Fact Sheet 20 Employees Paid Commissions by Retail Establishments Who are Exempt under Section 7(i) from Overtime under the Fair Labor Standards Act.

More than One and One-Half Times the Minimum Wage

To determine if the regular rate exceeds one and one-half times the minimum wage, divide the employee's total earnings for the pay period by the employee's total hours worked during the pay period



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Additional Information

- Visit the WHD homepage at:
www.wagehour.dol.gov
- Call the WHD toll-free information and helpline at
1-866-4US-WAGE (1-866-487-9243)
- Use the DOL interactive advisor system - *ELAWS*
(*Employment Laws Assistance for Workers and Small Businesses*) at: www.dol.gov/elaws
- Call or visit the nearest Wage and Hour Division Office



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