

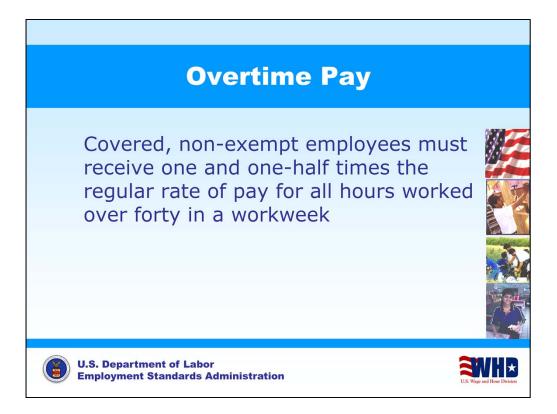
The Fair Labor Standards Act (FLSA) is the federal law of broadest application governing minimum wage, overtime pay, and youth employment. The Wage and Hour Division of the U.S. Department of Labor enforces the FLSA. In addition, the Wage and Hour Division also enforces:

- -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 tollfree line at 1-866-4USWAGE (1-866-487-9243). Information is also available on the Internet a www.wagehour.dol.gov.



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

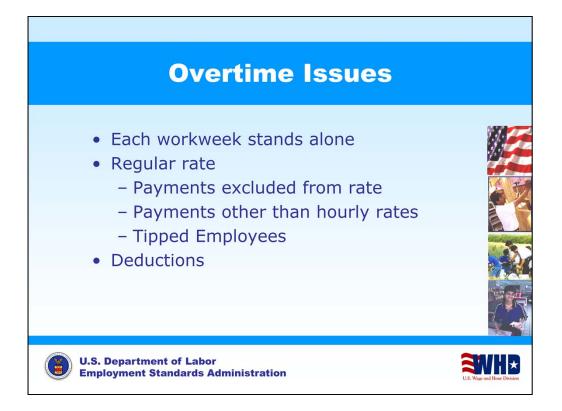


There is no limit on the number of hours employees aged 16 and older may work in any workday or workweek. The FLSA does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest. Also, the FLSA does not require overtime pay over 8 hours in a day, except in certain circumstances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

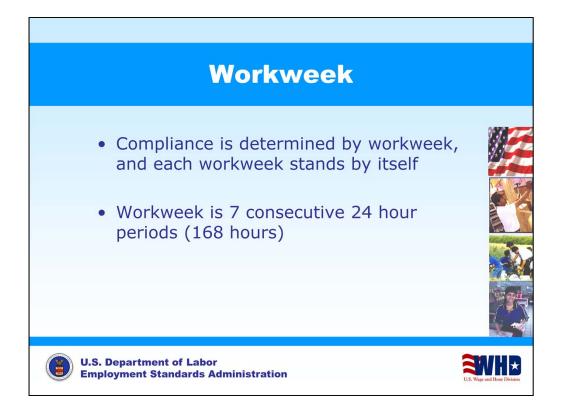
Nothing in the FLSA relieves an employer of any obligation he or she may have by contract or other Federal or State law.

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.

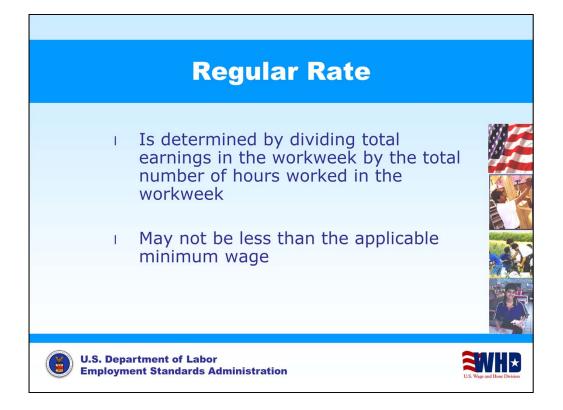
See also: Fact Sheet No. 023 Overtime Pay Requirements Of the Fair Labor Standards Act (FLSA); WH 1325 Overtime Compensation Under the Fair Labor Standards Act.



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.

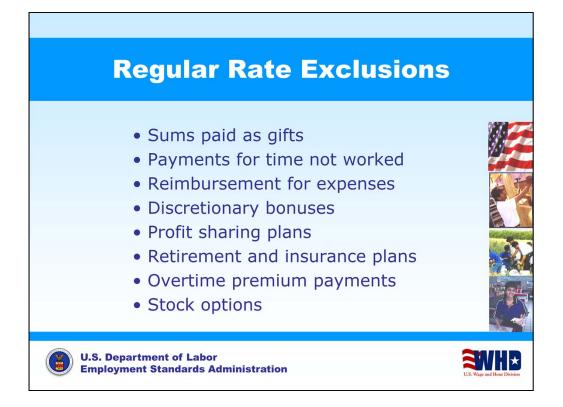


Compliance with wage payment requirements is determined on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It does not need to be a calendar week and may begin on any day and at any hour of the day as set by the employer.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



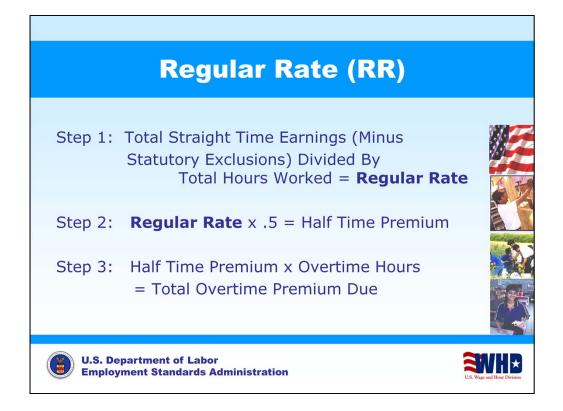
The regular rate includes **all earnings for employment except certain payments excluded by the FLSA. Earnings may be determined on a piece-rate, salary, commission**, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from 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).



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

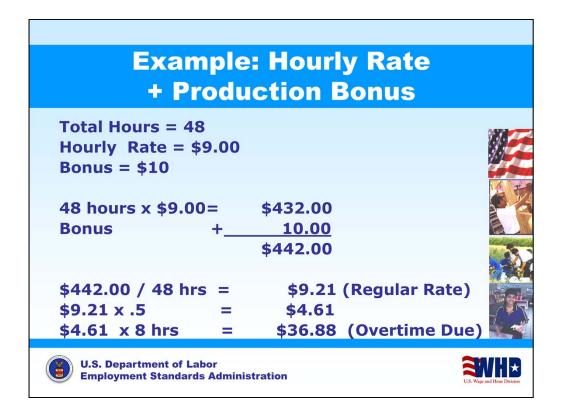
See also: 29 U.S.C.207(e); 29 CFR 778; Fact Sheet No. 23 Overtime.



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).

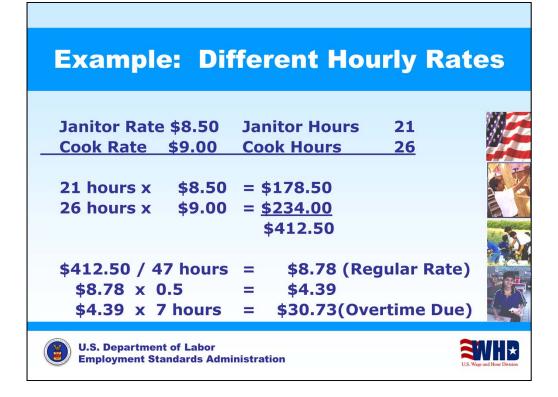


When an employee is paid an hourly rate and a production bonus, the earnings from both the hourly rate and the bonus are added together when determining the total straight time earnings.

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.

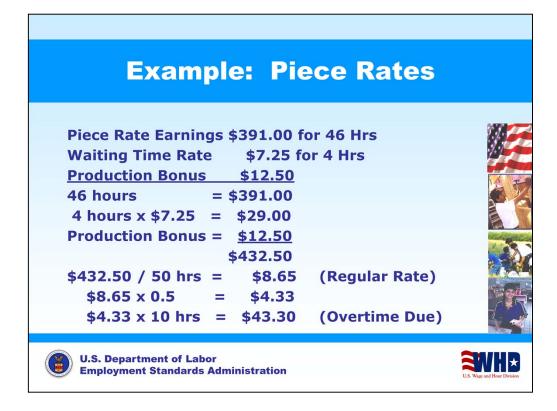
See also: 29 CFR 778.209 Overtime Compensation.



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.



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.

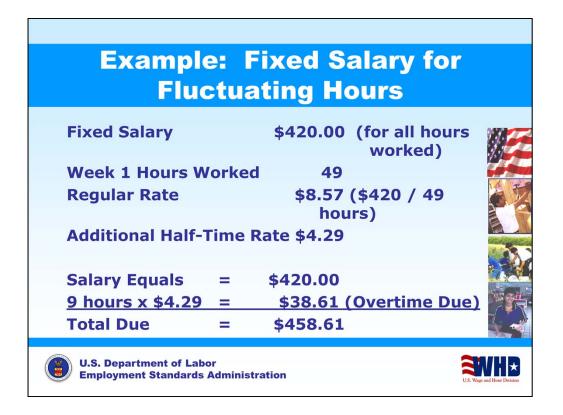
Example: Sa	laried f	or Fixed Hours
Salary Earnings	\$420.00	(for a 40 hour workweek)
Hours Worked	48	
Regular Rate	\$10.50	(\$420/40 hours)
Overtime Rate	\$15.75	
Salary Equals	= \$420.00	
8 hours x \$15.75 =	= <u>\$126.00</u>	
Total Due	= \$546.00	
U.S. Department of Labor Employment Standards Ad	ministration	U.S. Wage and Hour Devision

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.

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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 halftime 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.

	le: Fixed Salary for ctuating Hours	
Fixed Salary	\$420.00 (for all hours worked)	
Week 2 Hours Wo	orked 41	
Regular Rate	\$10.24 (\$420 / 41 hours)	
Additional Half-Ti	ime Rate \$5.12	
Salary Equals	= \$420.00	
<u>1 hour x \$5.12</u>	= \$5.12	The set
Total Due	= \$425.12	
U.S. Department of Lal Employment Standards		Wage and Hour Division

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.

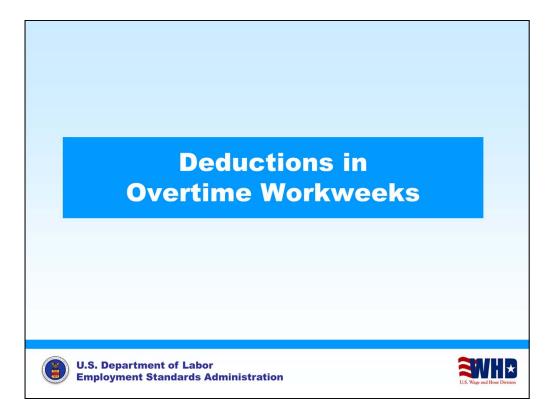
See also: 29 CFR 778.114 Overtime Compensation.

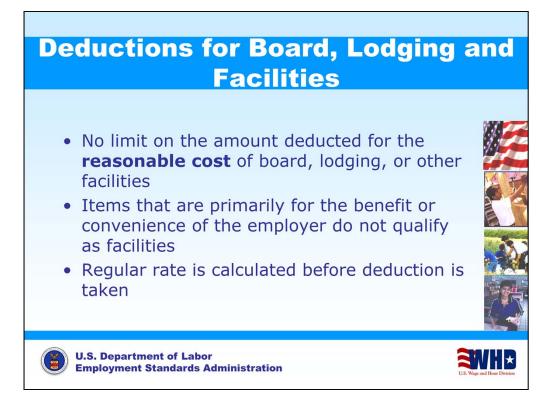
Example: Ti	ipped Employee	
Rate Employer Pays	\$2.13	9 37
Tip Credit Claimed	\$3.72	//
Regular Rate	\$5.85	
Additional Half-Time Rat	te \$2.93	
	- 4202 50	
50 Hours X \$5.85	= \$292.50 = \$20.20	144
10 hours X \$2.93	= \$29.30	
Total Due	= \$321.75 (less tip credit)	1
Tip Credit 50 x \$3.72	= \$186.00	the second
Total Cash Wage Due	= \$135.75	
U.S. Department of Labor Employment Standards Administr		NH

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 <u>not</u> 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.





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 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.



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 <u>www.wagehour.dol.gov</u> or calling 1-866-4US-WAGE.

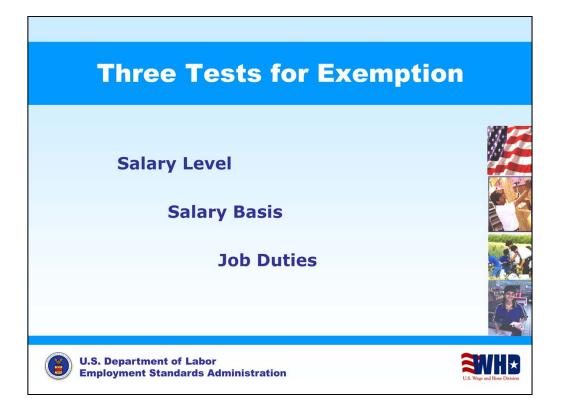


See FLSA Section 13(a)(1) and Section 13(a)(17); 29 CFR 541 Defining the Terms Executive, Administrative, Professional and Outside Salesman; Fact Sheet No. 017A Exemption For Executive, Administrative, Professional, & Outside Sales Employees Under The Fair Labor Standards Act (FLSA).



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).

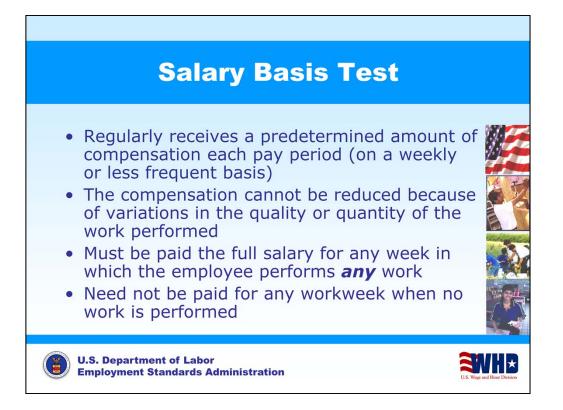


To qualify for exemption, employees must meet three tests for each exemption: An exempt employee must earn a minimum amount. The minimum amount must be paid on a salary basis. In addition, exempt employees must perform certain executive, administrative, professional, outside sales, or computer professional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



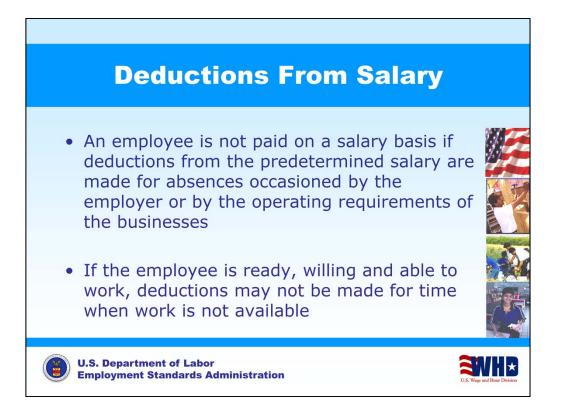
The minimum salary level required for exemption is \$455 per week, which must be paid "free and clear" – that is, the \$455 cannot include the value of any non-cash items that an employer may furnish to an employee, like board, lodging, or other facilities (for example, meals furnished to employees of 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 .

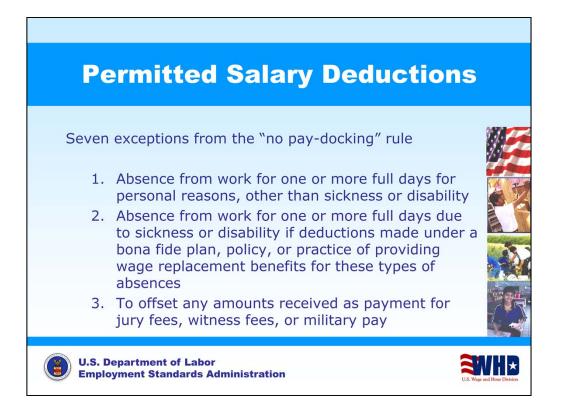


Generally, "salary basis" means that an exempt employee must regularly receive, each pay period and on a weekly or less frequent basis, a "predetermined amount" of compensation that cannot be reduced because of variations in the quality or quantity of work performed. But for a few identified exceptions, 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.



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.

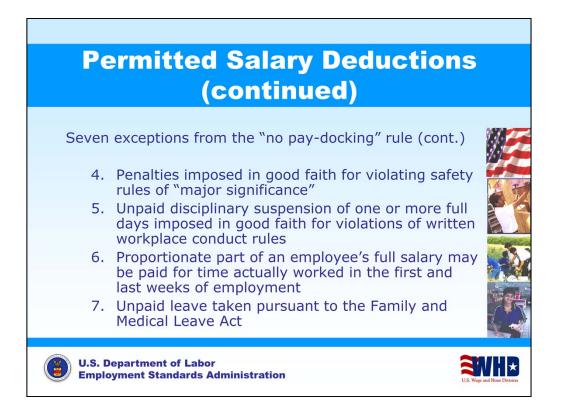


The regulations contain seven exceptions to this salary basis, "no pay-docking" rule. Employers may make deductions from salary of exempt employees in the following situations:

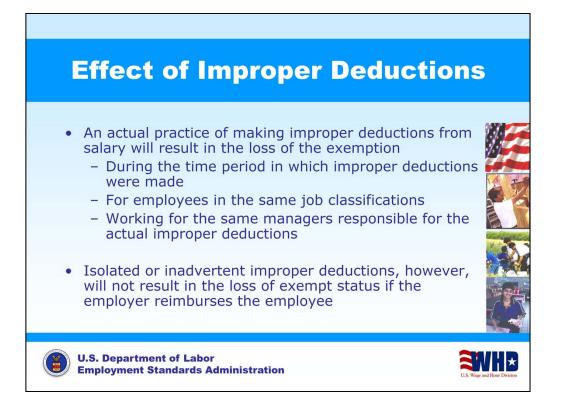
1. An absence from work for one or more full days for personal reasons, other than sickness or disability

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

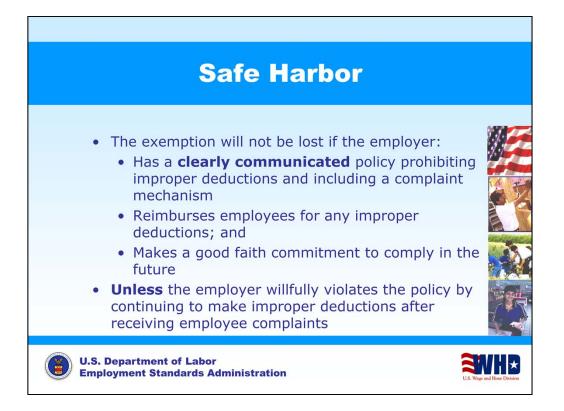


- 4. Penalties imposed in good faith for violating safety rules of "major significance," such as "no smoking" rules in explosive plants, oil refineries, and coal mines
- 5. Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of written workplace conduct rules, 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

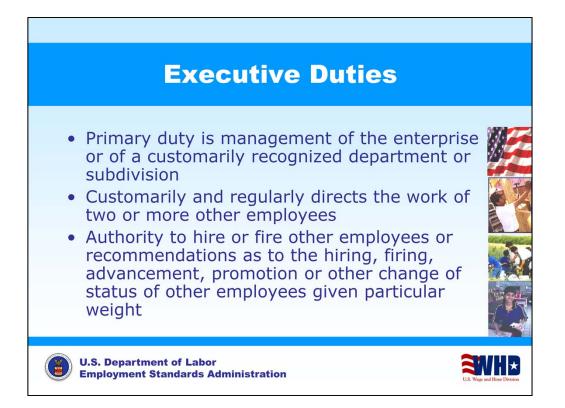


What is the effect on an employee's exemption status if an employer makes improper deductions from the salary? If the facts show that the employer had an actual practice of making improper deductions from salary, the exemption will be lost, and overtime pay due for hours worked over 40 per week during 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.

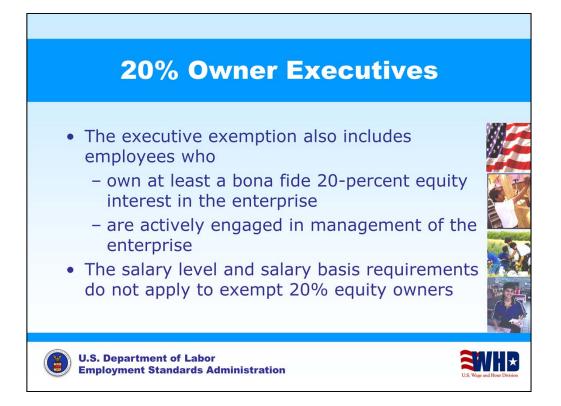
See also: 29 CFR 541.603 Effect of Improper Deductions from Salary.



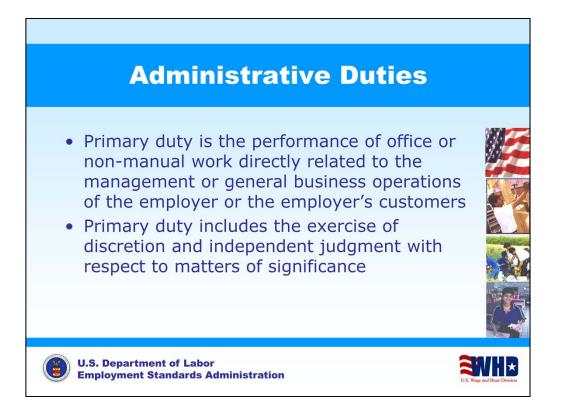
The regulations provide a safe harbor for employers who have a clearly communicated policy prohibiting improper deductions. If an employer (1) has such a clearly communicated policy which prohibits improper deductions and includes a complaint mechanism, (2) reimburses employees for any improper deductions, 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.



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.



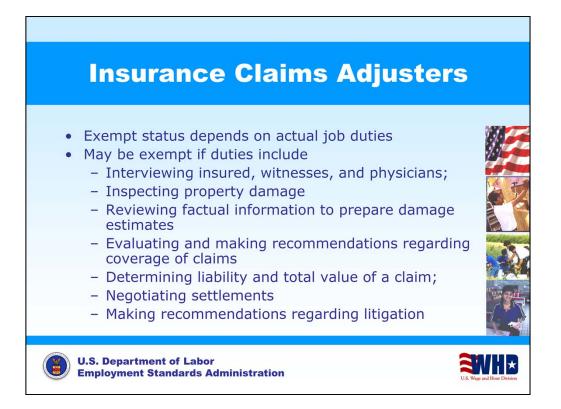
The revised final regulations recognize certain business owners as exempt executives. Employees who own at least 20-percent equity in a business and are actively engaged in the management of the enterprise are exempt executives. There is no duties test for these equity owners.



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.

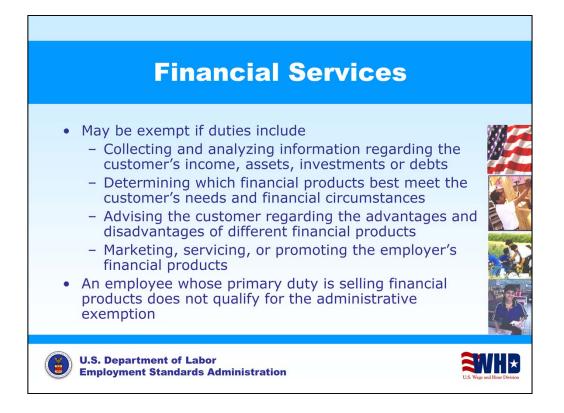


Work "directly related to management or general business operations" includes, but is not limited to, work in such areas as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; advertising; marketing; research; safety and health; human resources; public relations; legal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



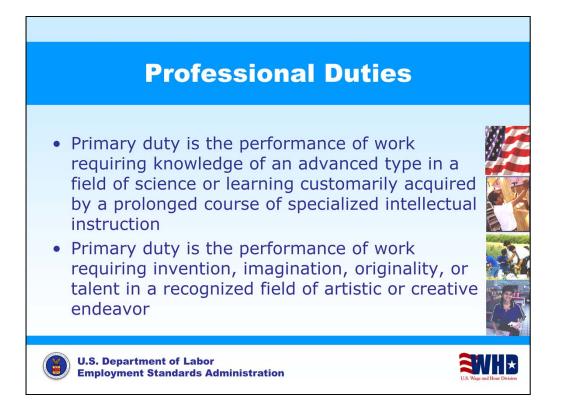
The regulations contain a number of examples to illustrate when employees may meet the duties requirements for the administrative exemption. For example, although exempt status depends on the actual job duties performed by the employee, insurance claims adjusters generally meet the duties requirements 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.

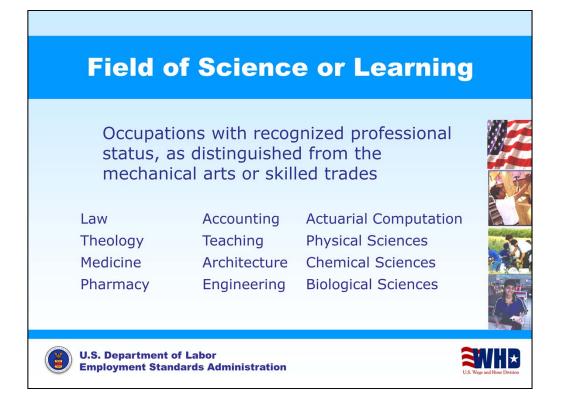


Financial services employees may meet the duties requirements for the administrative exemption if their duties include collecting and analyzing information regarding the customer's income, assets, investments, or debts; determining which financial products best meet the customer's needs and financial 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.



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.



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.



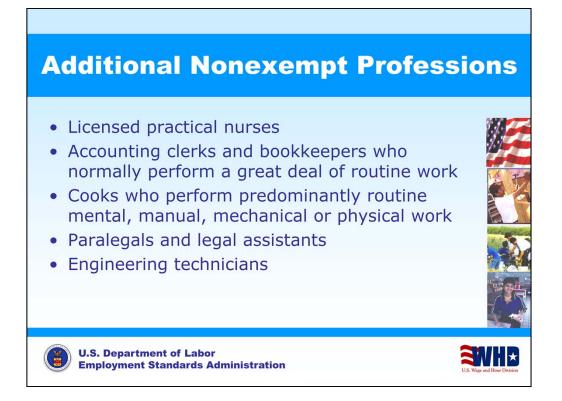
The learned professional exemption applies to any employee who holds a valid license or certificate permitting the practice of medicine, including osteopathic physicians, podiatrists, dentists and optometrists. The exemption is also available to an employee who holds the requisite academic degree for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

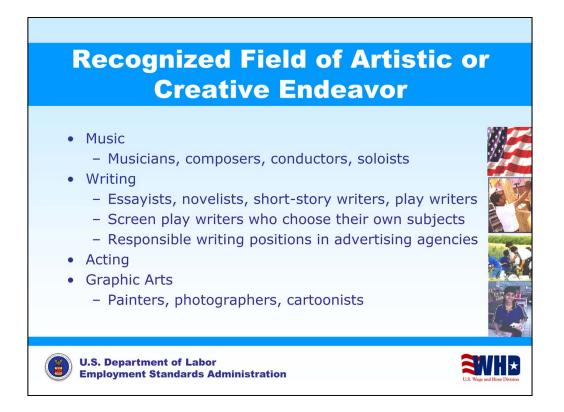
Registered or certified medical technologists, dental hygienists, and certified physician assistants also generally meet the duties requirements for the learned professional exemption if they successfully complete four years of study in an accredited college or university.



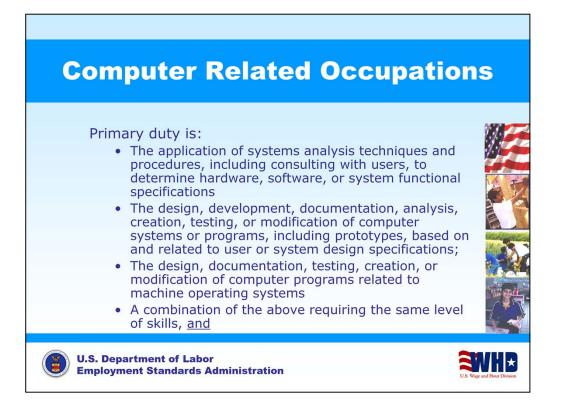
Other exempt learned professionals may include: lawyers, teachers, accountants, pharmacists, engineers, actuaries, chefs, certified athletic trainers, and funeral directors or embalmers, where the regulatory tests are satisfied, such as completion of a prolonged course of specialized intellectual instruction.



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.



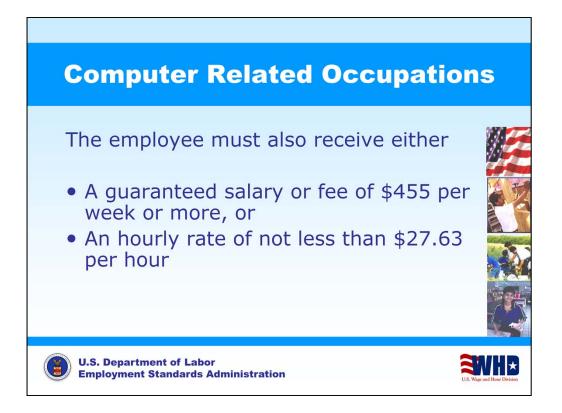
The recognized fields of artistic or creative endeavor include music, writing, acting and the graphic arts. Thus, exempt creative professionals include musicians, composers, conductors, novelists, screen writers, actors, painters, and photographers.



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.ht m.



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.



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.



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)

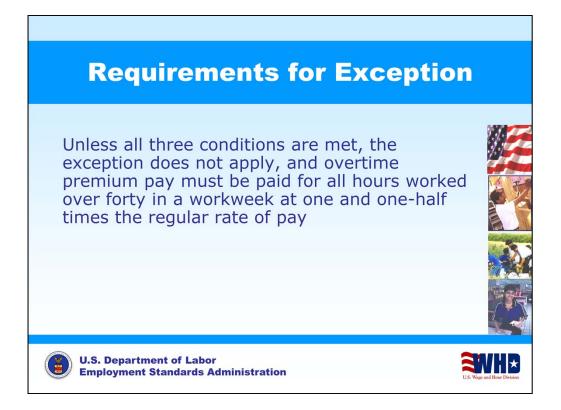


Restaurants and hotels frequently charge banquet customers or large parties a percentage of the bill as a mandatory service charge. If part or all of that service charge is paid to service employees, the payment is normally considered a commission rather than a tip.

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)



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



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

Some examples of retail businesses are:

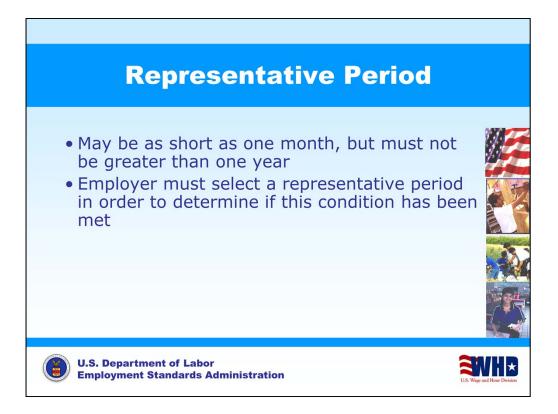
Employment Standards Administration

U.S. Department of Labor

- •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



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 <u>regular rate</u> 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





U.S. Department of Labor Employment Standards Administration



