

Corporate Compliance Forms and Tools Commonly Used FLSA Employee Exemptions

Employees must be paid according to overtime requirements found in the Fair Labor Standards Act (FLSA) unless their particular job is exempt from overtime pay. Table 1 lists different types of federal law exemptions that may result in an employee being exempt being paid overtime. You should consult with legal counsel to determine whether there may be different or additional state law requirements that are applicable.

Exemption	Description
<p>Executive Exemption</p> <p>See 29 C.F.R. § 541.100 and Section 13(a)(1) of the FLSA and fact sheets #17A and #17B</p>	<p>To qualify for the executive employee exemption, <i>all</i> of the following requirements must be satisfied:</p> <ul style="list-style-type: none"> • The employee must be compensated on a salary basis at a rate not less than \$684 per week; • The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise; • The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and • 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.
<p>Administrative Exemption</p> <p>See 29 C.F.R. § 541.200 and Section 13(a)(1) of the FLSA and fact sheets #17A and #17C</p>	<p>To qualify for the administrative employee exemption, <i>all</i> of the following requirements must be satisfied:</p> <ul style="list-style-type: none"> • The employee must be compensated on a salary or fee basis at a rate not less than \$684 per week; • 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”; and • The employee’s primary duty must include “the exercise of discretion and independent judgment with respect to matters of significance.”

Exemption	Description
<p>Learned Professional Exemption</p> <p>See 29 C.F.R. § 541.300 and Section 13(a)(1) of the FLSA and fact sheets #17A and #17D</p>	<p>To qualify for the learned professional employee exemption, <i>all</i> of the following requirements must be satisfied:</p> <ul style="list-style-type: none"> • The employee must be compensated on a salary or fee basis at a rate not less than \$684 per week; • 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; • The advanced knowledge must be in a field of science or learning; and • The advanced knowledge must be “customarily acquired by a prolonged course of specialized intellectual instruction.”
<p>Creative Professional Exemption</p> <p>See 29 C.F.R. § 541.302 and Section 13(a)(1) of the FLSA and fact sheets #17A and #17D</p>	<p>To qualify for the creative professional employee exemption, <i>both</i> of the following requirements must be satisfied:</p> <ul style="list-style-type: none"> • The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week; and • The “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.”
<p>Outside Sales Exemption</p> <p>See 29 C.F.R. § 541.500 and Section 13(a)(1) of the FLSA and fact sheets #17A and #17F</p>	<p>To qualify for the outside sales employee exemption, <i>both</i> of the following requirements must be satisfied:</p> <ul style="list-style-type: none"> • The employee’s primary duty must be making sales, 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;” and • The employee must be “customarily and regularly engaged away from the employer’s place or places of business.”
<p>Commissioned Sales Exemption</p> <p>See Section 7(i) of the FLSA and fact sheet #20</p>	<p>To qualify for the outside commissioned sales exemption, the following requirements must be satisfied:</p> <ul style="list-style-type: none"> • The business is a retail or service establishment; and • More than half of the employee’s earnings come from commissions, and the employee averages at least one and one-half times the minimum wage for each hour worked.

Exemption	Description
<p>Highly Compensated Exemption</p> <p>See 29 C.F.R. § 541.601 and fact sheet #17H</p>	<p>To qualify for the highly compensated employee exemption, the following requirements must be satisfied:</p> <ul style="list-style-type: none"> • The employee’s “primary duty includes performing office or non-manual work”; • The employee’s paid total annual compensation is \$107,432 or more (which must include at least \$684 per week paid on a salary or fee basis); and • The employee customarily and regularly performs at least one of the duties of an exempt executive, administrative, or professional employee identified in the standard tests for exemption.
<p>Computer Employee Exemption</p> <p>See 29 C.F.R. § 541.400 and Section 13(a)(17) of the FLSA and fact sheet #17E</p>	<p>To qualify for the computer employee exemption, the following requirements must be satisfied:</p> <ul style="list-style-type: none"> • The employee must be compensated <i>either</i> on a salary or fee basis at a rate not less than \$684 per week, <i>or</i>, if compensated on an hourly basis, at a rate not less than \$27.63 an hour; • The employee must be employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field; and • The employee’s primary duties must consist of: <ul style="list-style-type: none"> ◦ “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; or ◦ “A combination of the aforementioned duties, the performance of which requires the same level of skills.”

Table 1: Commonly Used Federal Exemptions —29 C.F.R. § 541

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