

Department of Labor revisions of Overtime Exemption Provisions of the Fair Labor Standards Act Information Packet

The DOL recently changed the overtime exemption rules effective August 23, 2004, which affect many of our clients.

This information packet is designed to inform you of these new white-collar exemption rules and how they might affect your business in a simple, yet comprehensive way.

In the following pages you will find these informative sections:

- **Executive Summary of the new provisions**
- **Details of each exemption rule**
- **Easy to follow tests for each exemption rule to make sure you are complying to the new rules:**
 - Executive Business Owners
 - Executive Employees
 - Administrative Employees
 - Learned Professional Employees
 - Creative Professional Employees
 - Computer-Related Professions
 - Outside Salesperson
 - Highly Compensated Employees

DOL Overtime Rules Overview

The Department of Labor has released its long-awaited revisions to the overtime provisions of the Fair Labor Standards Act. The new rules, with their numerous modifications to the proposed rules announced March 2003, will present some major changes to the way in which employers distinguish between nonexempt employees—those who are subject to the minimum wage and overtime provisions of the FLSA—and exempt employees—those who are not subject to those provisions.

Below are eight decision-making flow charts illustrating DOL's revised exemption tests—including the new highly compensated employee test—in Adobe® format. The rules become effective in 120 days, according to a DOL press release.

\$455 Minimum Standard Salary

As in the proposed rules offered last year, there will be only a single “standard” test for each exempt category of worker. The current “long” and “short” tests will be eliminated. Generally, the new standard tests include the salary-level requirement that an employee be paid a minimum of \$455 per week—or \$23,660 per year. Last year's proposal had set the mark at \$425. The salary-test was last modified in 1975.

- Exempt executives under the new rules must have the authority to hire or fire other employees, a requirement currently not a part of the “short test.”
- Other than the new higher salary requirement, the administrative exemption remains essentially unchanged.
- The new rules for professionals drop the the mention of “training in the armed forces, attending a technical school, attending a community college,” that was proposed as meeting the advanced knowledge criteria.

Exempt at \$100,000 a Year

A highly-compensated employee earning a minimum of \$100,000 a year generally will be exempt from overtime if the employee's primary duty includes performing office or nonmanual work and the employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.

The individual tests for these rules:

- Executive Business Owners: White-Collar Exemption Test (Effective Aug. 23, 2004)
- Executive Employees: White-Collar Exemption Test (Effective Aug. 23, 2004)
- Administrative Employees: White-Collar Exemption Test (Effective Aug. 23, 2004)
- Learned Professional Employees: White-Collar Exemption Test (Effective Aug. 23, 2004)
- Creative Professional Employees: White-Collar Exemption Test (Effective Aug. 23, 2004)
- Computer-Related Professions: White-Collar Exemption Test (Effective Aug. 23, 2004)
- Outside Salesperson: White-Collar Exemption Test (Effective Aug. 23, 2004)
- Highly Compensated Employees: White-Collar Exemption Test (Effective Aug. 23, 2004)



U.S. Department of Labor

Employment Standards Administration Wage and Hour Division

FairPay Fact Sheet by Exemption Under the Fair Labor Standards Act (FLSA)

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR [Part 541](#).

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 [outside sales](#) employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain [computer](#) employees. To qualify for 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.

See other fact sheets in this series for more detailed information on the specific exemptions for [executive](#), [administrative](#), [professional](#), [computer](#), and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary basis](#) (as defined in the regulations) at a rate not less than \$455 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.

Administrative Exemption

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 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 includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 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.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- 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.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, 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 performing the duties described below;
- The employee's primary duty must consist of:

- 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- 2) 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;
- 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), 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.

Highly Compensated Employees

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

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to "white collar" employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other "blue collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers,

parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Where to Obtain Additional Information

The Department of Labor provides this information to enhance public access to information on its programs. This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

For more information regarding the FLSA, visit the Wage and Hour Division's Web site at www.wagehour.dol.gov or call our toll-free help line, available from 8 a.m. to 5 p.m. in your time zone, at 1-866-4US-WAGE (1-866-487-9243).

Copies of Wage and Hour publications also may be obtained from any office of the Wage and Hour Division. To locate the nearest Wage and Hour Division office, telephone the toll-free help line or visit our Web site for a complete listing of offices.

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/esa/contacts/state_of.htm.

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Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE, TTY: 1-877-889-5627
[Contact Us](#)

Executive Business Owners: White-Collar Exemption Test

Does the employee own at least a bona fide 20 percent equity interest in the enterprise in which employed, regardless of the type of business organization?

No

Yes

Is the employee actively engaged in the management of the business organization?

No

Yes

Employee is exempt

Employee is not exempt

Executive Employees: White-Collar Exemption Test

Is the employee paid on a salary basis that is not subject to reduction because of variations in the number of hours worked or in the quality of work performed?

No

Yes

Is the employee's salary at least \$455 weekly?

No

Yes

Is the employee's primary duty the management of the enterprise or a recognized department or subdivision?

No

Yes

Does the employee customarily and regularly direct the work of two or more other full-time employees?

No

Yes

Does the employee have the authority to hire or fire other employees, or are the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees given particular weight?

No

Yes

Employee is exempt

Employee is not exempt

Administrative Employees: White-Collar Exemption Test

Is the employee paid on a salary basis that is not subject to reduction because of variations in the number of hours worked or in the quality or quantity of work performed?

No

Yes

Is the employee's salary at least \$455 weekly?

No

Yes

Is the employee's primary duty 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?

No

Yes

Does the employee's primary duty include the exercise of discretion and independent judgment with respect to matters of significance?

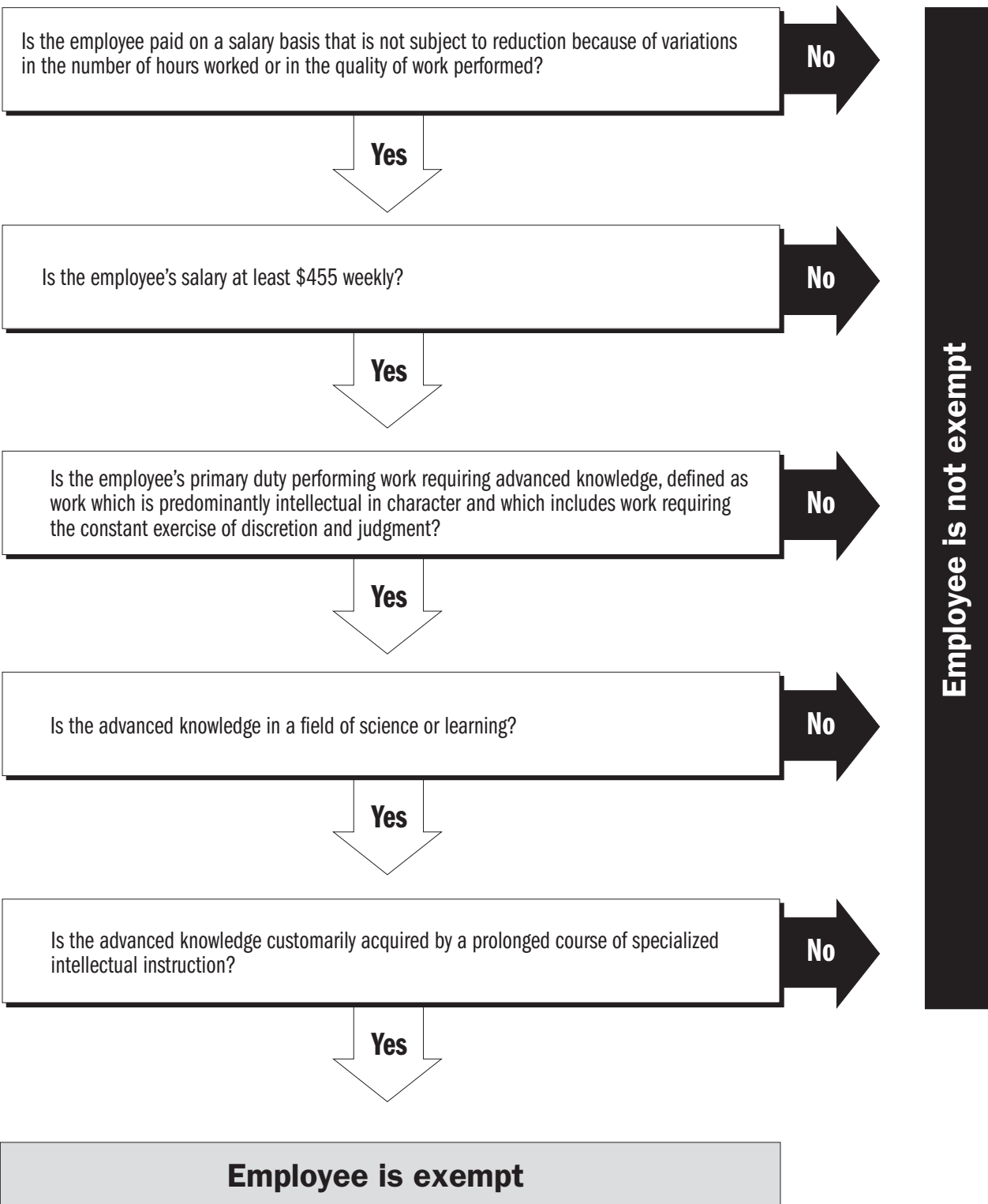
No

Yes

Employee is exempt

Employee is not exempt

Learned Professional Employees: White-Collar Exemption Test



Creative Professional Employees: White-Collar Exemption Test

Is the employee paid on a salary basis that is not subject to reduction because of variations in the number of hours worked or in the quality or quantity of work performed?

No

Yes

Is the employee's salary at least \$455 weekly?

No

Yes

Is the employee's primary duty performing work that requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor?

No

Yes

Employee is not exempt

Employee is exempt

Computer-Related Professions: White-Collar Exemption Test

Is the employee paid (1) at least \$455 per week on a salary basis or (2) at least \$27.63 an hour? (Note: Salaried workers in the computer field who already qualify under one of the other white-collar exemptions remain exempt as long as they continue to meet the applicable duties and responsibilities tests for that exemption.)

No

Yes

Are the employee's primary duties:

- Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; or
- 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; or
- Design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
- A combination of the above duties, the performance of which requires the same level of skill?

No

Yes

Is the employee a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field?

No

Yes

Employee is exempt

Employee is not exempt

Outside Salesperson: White-Collar Exemption Test

Is the employee's primary duty 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?

No

Yes

Is the employee customarily and regularly engaged away from the employer's place or places of business?

No

Yes

Employee is exempt

Employee is not exempt

Highly Compensated Employees: White-Collar Exemption Test

Is the employee paid at least \$100,000 annually, including at least \$455 per week paid on a salary basis?

No

Yes

Does the employee perform office or nonmanual work?

No

Yes

Does the employee 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?

No

Yes

Employee is exempt

Employee is not exempt