

To qualify for exemption, employees must generally meet tests regarding salary level, salary basis, and job duties

**Primary Duties Test**

When determining a primary duty, consider:

1. Relative importance of the exempt duties compared to other types of duties
2. Amount of time spent performing exempt work
3. Employee's relative freedom from direct supervision
4. Relationship between the employee's salary and wages paid to others for same kind of work

**Salary Level**

An employee must be paid at least \$455 per week on a salary or fee basis. Computer employees may be exempt if they earn \$27.63 or more per hour and pass the duties test.

This does not apply to doctors, lawyers, or certain computer-related occupations.

**Salary Basis**

An employee must receive a predetermined amount of compensation each pay period with no reductions due to variations in quality or quantity of work performed. The employee must be paid full salary for any week in which *any* work is performed; need not be paid for any week when no work is performed. Some employees may be paid on a fee basis if it's an agreed sum for completing a single job, but not for a series of non-unique jobs.

# Exempt or Not?

**Calculating Overtime**

Overtime must be paid for each hour worked in excess of 40 hours in a week

- Overtime distribution is usually detailed in a union contract or specifically defined by work practice. A properly kept roster will prevent unfair distribution
- Federal law does not require payment of overtime for hours worked over 8 in a day, just hours worked over 40 in a week

- If an employee is salary non-exempt and works less than 40 hours a week, they must be paid only for the hours worked; if they work over 40 hours in a week, they must be paid 1 1/2 times the hourly rate
- Lunch breaks (if not counted as hours worked) are not counted towards overtime
- Travel time must be counted as overtime if: it is spent traveling from one worksite to another, the employee is fulfilling employer requirements, or the employee has gone home from the day's work and is called to travel a substantial distance

**Who is Exempt?** FLSA provides exemption from both minimum wage and overtime pay for employees who are employed in a bona fide executive, administrative, or professional capacity. Computer employees may be exempt professionals under Section 13(a)(1).

Non-exempt salaried employees are paid overtime by converting the salary to an hourly rate  
 ⇒ Salaried with fixed 40 hour week: weekly salary divided by 40  
 ⇒ Salaried with a fixed week of fewer than 40 hours: weekly salary divided by the number of hours that the salary is intended to compensate  
 ⇒ Salaried with an irregular workweek: For each hour worked over 40, add one half the rate per hour for that week

**Professional Employees**

Primary duty: performance of work requiring knowledge of advanced type in a field of science of learning customarily acquired by a prolonged course of study; or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor

- Occupations with recognized professional status include: law, theology, medicine, accounting, teaching, architecture, engineering, actuarial computation, physical sciences, chemical sciences, biological sciences
- Also exempt are those who hold a valid license permitting practice of medicine or are engaged in an internship or resident program

**Executive Employees**

Primary duty: management of the enterprise or recognized department or subdivision. They regularly direct the work of at least two or more employees (must be two full-time employees or equivalent) and have authority to hire and fire OR gives recommendations for the hiring, firing, and advancement of employees

**Computer Employees**

The primary duty of an exempt computer employee must consist of:

- Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications
- Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs
- Design, documentation, testing, creation or modification of computer programs related to machine operating systems

Computer employees must pass the duties test even if they make the threshold amount.

**Administrative Employees**

Primary duty: office or non-manual work directly relating to management policies or general business operations of the employer or its customers. This must also include the exercise of discretion and independent judgment with respect to matters of significance. The employer must analyze whether the employee is exercising skill and experience.

**Deductions From Pay**

Deductions may not be made for time when work is not available. Partial day increments for non-exempt employees is acceptable. Not paid on salary basis if deductions are made for absences by employer or operations of the business.

| Acceptable Deductions  | Improper Deductions   |
|--|---|
| <ul style="list-style-type: none"> <li>• Absence from work for one or more full days (personal reasons)</li> <li>• Offset any amounts received as payment for jury fees, military pay</li> <li>• Penalties imposed in good faith for infractions of safety rules</li> <li>• Unpaid disciplinary suspension</li> <li>• Proportionate pay for first or last week of employment</li> <li>• Unpaid leave taken pursuant of FMLA</li> </ul> | <ul style="list-style-type: none"> <li>• Partial day absence for parent teacher conference</li> <li>• Deducting one day pay for employer being closed (due to weather)</li> <li>• Deducting three days pay for jury duty rather than offsetting any amount received as payment</li> </ul> |

# Specifications

## Highly Compensated Exemption

An employee paid a salary of \$100,000 or more, who performs office or non-manual work may be exempt. Their base salary, non-discretionary bonuses, and other compensation may be used to determine the \$100,000 threshold.

## Salary and Compensation

Additional compensation (bonuses, additional pay) for an exempt employee is permissible so long as the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis. Compensation may be given for hours worked beyond the normal workweek.

Employee contributions are not deducted from salary for the purpose of determining whether an employee meets a threshold. Additionally, annual compensation does not include:

- credit for board or lodging
- payments for medical or life insurance
- contributions to retirement plans or fringe benefits

## “Concurrent Duties”

An employee who does both exempt and non-exempt work must be categorized by their primary duty. Employees generally cannot spend more than 49% of the time performing non-exempt work. Ex:

An assistant manager may help customers, stock shelves and clean, but if their primary duty is management, then they are EXEMPT.

A supervisor on an assembly line who has occasional responsibility for directing work of non-exempt employees is NON EXEMPT because it is not their primary duty.

## Specific Jobs

- Buyers can be exempt administrative employees as long as the buyer’s work involves substantial discretion and independent judgment
- The administrative exemption includes employees whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment
- Accountants who are CPAs are EXEMPT, bookkeepers, accounting clerks who perform routine work are NONEXEMPT
- RNs are EXEMPT, LPNs are NONEXEMPT
- Athletic trainers with degree may be EXEMPT
- Executive or administrative assistants to a business owner or senior executive who has been delegated authority regarding matters of significance are EXEMPT
- Executive secretaries who have been delegated authority regarding matters of significance qualify as EXEMPT

A “primary duty” is the principal, main, major or most important duty that the employee performs.

“Directly related to management or general business operations” means directly related to assisting with the running or servicing of the business, as distinguished, for example from working on a manufacturing production line or selling a product in a service establishment.

“Discretion and independent judgment” involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered.

“Matters of Significance” means:

1. Employee has authority to formulate, affect, interpret or implement management policies or practices
2. Employee carries out major assignments in operations of the business
3. Employee performs work that affects business operations to substantial degree
4. Employee has authority to commit the employer in matters that have significant financial impact
5. Employee has authority to deviate from established policies and procedures without prior approval
6. Employee provides consultation or expert advice to management
7. Employee is involved in planning long or short-term business objectives
8. Employee investigates and resolves matters of significance on behalf of management
9. Employee represents the company in handling complaints, arbitrating disputes or resolving grievances

## Additional Facts

It is acceptable for an employer to require exempt employees to keep track of hours or work a specific schedule.

Exemptions do not apply to employees training for employment in exempt positions.

Job Titles do not determine exemption status.