

# Executive, Administrative, Professional and Outside Sales Exemptions Under the Fair Labor Standards Act

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U. S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

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Executive, Administrative, Professional and Outside  
Sales Exemptions under the Fair Labor Standards Act

The Fair Labor Standards Act provides minimum wage, overtime pay, record keeping, and child labor standards. Some employees are specifically exempted from the requirements of the Act. This pamphlet discusses the exemption from the minimum wage and overtime requirements for bona fide executive, administrative, and professional employees, and for outside sales personnel. If you have specific questions about the statutory requirements, contact the Wage and Hour Division's nearest office. Give detailed information on your problem, since coverage and exemption depend on the facts in each case.

A Basic Rule

Bona fide executive, administrative, and professional employees (including academic administrative personnel or teachers) and outside sales people are exempt from the minimum wage and overtime requirements of the Act if they meet the tests set for each category.

Whether employees are exempt depends on

- (1) their duties and responsibilities, and
- (2) (except in the case of doctors, lawyers, teachers, and outside sales people) the salary paid.

The minimum weekly salary specified in each category is one of several tests applied in determining the application of the exemption; it is not a minimum wage requirement. No employer is required to pay an employee the salary specified in the regulations, unless the exemption is claimed.

Any employee who is paid at least the minimum weekly salary specified and who also meets all of the duties and responsibilities specified is exempt from the minimum wage and overtime pay requirements of the law. An honorific title does not make an employee exempt; nor is the employee exempt simply because payment is on a salary rather than an hourly basis.

EXECUTIVE

In order for an employee to be exempt as a bona fide executive, all the following tests must be met:

- (a) The employee's primary duty must be management of the enterprise, or of a customarily recognized department or subdivision; and

- (b) The employee must customarily and regularly direct the work of at least two or more other employees therein; and
- (c) Must have the authority to hire or fire, or recommend hiring and firing; or whose recommendation on these and other actions affecting employees is given particular weight; and
- (d) Must customarily and regularly exercise discretionary powers; and
- (e) Must devote no more than 20 percent (less than 40 percent if employed by a retail or service establishment) of his or her hours worked to activities not directly and closely related to the managerial duties; and
- (f) Must be paid on a salary basis at a rate of at least \$155 a week (or \$130 a week in Puerto Rico, Virgin Islands and American Samoa) exclusive of board, lodging or other facilities.

The percentage tests on nonexempt work would not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise where employed.

There is a special proviso for high salaried executives. An executive paid at least \$250 a week (\$200 in Puerto Rico, the Virgin Islands, and American Samoa) on a salary basis (exclusive of board, lodging and other facilities) is exempt if regularly directing the work of at least two or more other employees and the primary duty is management of the enterprise, or a recognized department or subdivision thereof.

A determination of whether an employee has management as the primary duty must be based on all the facts in a particular case. In the ordinary case, it may be taken as a rule of thumb that primary duty means the major part, or over 50 percent of the employee's time. Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of the time in management duties, the employee nevertheless might have management as the primary duty if the other pertinent factors support such a conclusion.

The exemption is applicable to employees employed in a bona fide executive capacity and does not include employees training to become executives and not actually performing the duties of an executive.

The following are some examples of duties which are managerial when performed by the employee in managing a department or supervising other employees:

- Interviewing, selecting, and training employees.
- Setting and adjusting pay rates and work hours.
- Directing work.

Keeping production records of subordinates for use in supervision.  
Evaluating the employees' efficiency and productivity.  
Handling the employees' complaints.  
Disciplining the employees.  
Planning work.  
Determining techniques.  
Distributing work.  
Deciding on types of merchandise, materials, supplies, machinery, or tools.  
Controlling flow and distribution of merchandise, materials, and supplies.  
Providing for safety of employees and property.

Examples of nonexempt duties:

Performing the same kind of work as the employees supervised.  
Performing any production work, even though not like that performed by subordinates, which is not part of supervisory functions.  
Making sales, replenishing stocks, returning stock to shelves, except for supervisory training or demonstration purposes.  
Performing routine clerical duties, such as bookkeeping, billing, filing, operating business machines.  
Checking and inspecting goods as a production operation, rather than as a supervisory function.  
Keeping records on employees not under the executive's supervision.  
Preparing payrolls.  
Performing maintenance work.  
Repairing machines, as distinguished from an occasional adjustment.  
Cleaning around machinery, rearranging displays, taking an employee's place at the workbench, or on the sales floor.

ADMINISTRATIVE EMPLOYEES

In order for an employee to be employed in a bona fide administrative capacity, all the following tests must be met:

- (a) The employee's duty must be either:
  - (1) Responsible office or nonmanual work directly related to the management policies or general business operations of the employer or the employer's customers; or
  - (2) Responsible work that is directly related to academic instruction or training carried on in the administration of a school system or educational establishment; and
- (b) The employee must customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures, and must have the authority to make important decisions; and

- (c) The employee must:
- (1) Regularly assist a proprietor or a bona fide executive or administrative employee; or
  - (2) Perform work under only general supervision along specialized or technical lines requiring special training, experience or knowledge; or
  - (3) Execute under only general supervision special assignments; and
- (d) The employee must not spend more than 20 percent of the time worked in the workweek (less than 40 percent if employed by a retail or service establishment) on nonexempt work-that is, work not directly and closely, related to the administrative duties, and
- (e) The employee must be paid on a salary or fee basis at a rate of not less than \$155 a week (or \$130 a week in Puerto Rico, virgin Islands or American Samoa), exclusive of board, lodging, or other facilities, or in the case of academic administrative personnel in private school, the salary requirement for exemption must be at least \$155 or alternately, academic administrative personnel may be paid a salary which is at least equal to the entrance salary for teachers in the employing school system or educational establishment or institution.

Special Proviso for High Salaried Administrative Employees:

The percentage limitations on nonexempt work do not apply to an administrative employee who is paid on a salary or fee basis of at least \$250 a week (\$200 per week in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities. The employee will be exempt if:

The primary duty consists of responsible office or nonmanual work directly related to management policies or general business operations; or

Responsible work in the administration of a school or educational establishment or institution or department or subdivision thereof that is directly related to the academic instruction or training; and

Such primary duty includes work requiring the exercise of discretion and independent judgment.

Types of Administrative Employees include, but are not limited to:

1. Executive and administrative assistants, such as executives secretaries, assistants to the general manager, confidential assistants, and assistant buyers in the retail trade. These employees, generally found in large establishments, assist an executive in responsible duties but do not themselves necessarily have executive authority.

2. Staff employees who are advisory specialists for management. Examples: tax, insurance, and sales research experts; wage rate analysts; investment consultants, heads of one employee departments, such as credit managers, purchasing agents, buyers, safety directors, personnel directors, and labor relations directors.

3. Those who perform special assignments, often away from their employer's place of business. Examples: management consultants, lease buyers, and utility company field representatives.

4. Academic administrative personnel performing work directly in the field of education. Examples: the superintendent or other head of the system and those assistants whose duties are primarily concerned with the administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, and other aspects of the teaching program.

In individual school establishments, the principal and the vice principals and heads of departments, such as the mathematics department, the foreign language department, and the manual crafts department are other examples.

#### Job Titles Insufficient as Yardsticks

The employees for whom exemption is sought under the term "administrative" have extremely diverse functions and a wide variety of titles. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the duties, responsibilities and salary meet all the requirements of the appropriate section of the regulations and a title alone is of little or no assistance in making this determination.

#### Some examples of employees who are not exempt:

- time study personnel
- bank tellers
- bookkeepers
- private secretaries
- receiving and shipping clerks

In school systems persons performing non-academic duties such as

- job relating to building management and maintenance
- jobs relating to the health of students
- and staff members such as social workers, lunch room manager or dietitian.

Some of these employees in school systems may otherwise qualify for exemption as "executive", "administrative" or "professional" employees, but not as academic administrative personnel, if all the requirements are met.

PROFESSIONAL EMPLOYEES

This exemption includes the learned, the artistic, and the teaching professions.

Except as otherwise noted below, a professional employee must meet all these tests to be exempt:

- (a) The primary duty must be either:
  - (1) Work requiring knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study; or
  - (2) Work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on the employee's invention, imagination, or talent; or
  - (3) Work as a teacher certified or recognized as such in the school system or educational institution by which employed; and
- (b) The employee must consistently exercise discretion and judgment; and
- (c) Must do work that is predominantly intellectual and varied, as distinguished from routine or mechanical duties, and
- (d) Must not spend more than 20 percent of the time worked in the workweek on activities not essentially a part of and necessarily incident to the professional duties, and
- (e) Must be paid on a salary or fee basis at a rate of not less than \$170 a week (or \$150 a week in Puerto Rico, the Virgin Islands and American Samoa) exclusive of board, lodging, or other facilities.

Note - This salary requirement does not apply to:

- (1) an employee who is the holder of a valid license or certificate permitting the practice of law or medicine and as actually engaged in such practice; or
- (2) an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program; or
- (3) an employee employed and engaged as a teacher in a school or educational institution.

### Special Proviso for High Salaried Professional Employees

The 20 percent test on nonexempt work does not apply to a professional employee who is paid on a salary or fee basis at a rate of at least \$250 a week (\$200 a week in Puerto Rico, Virgin Islands, and American Samoa) exclusive of board, lodging or other facilities provided:

The employee's primary duty consists of work requiring knowledge of an advanced type in a field of science or learning, or work as a teacher in an activity of imparting knowledge, which requires consistent exercise of discretion and judgment; or

The primary duty is artistic work that requires invention, imagination, or talent in a recognized field of artistic endeavor.

#### Learned professions:

Generally speaking, the professions which meet the requirement for a prolonged course of specialized intellectual instruction and study include law, medicine, nursing, accountancy, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, including pharmacy and registered or certified medical technology and so forth. The typical symbol of the professional training and the best prima facie evidence of its possession is the appropriate academic degree, and in these professions an advanced academic degree is a standard (if not universal) prerequisite. In the case of registered (or certified) medical technologists, successful completion of 3 academic years of preprofessional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association will be recognized as a prolonged course of specialized intellectual instruction and study. Registered nurses have traditionally been recognized as professional employees by the Wage-Hour Division in its enforcement of the Act. Although, in some cases, the course of study has become shortened (but more concentrated), nurses who are registered by the appropriate State examining board will continue to be recognized as having met the requirement.

The areas in which the professional exemption maybe available are expanding. As knowledge is developed, academic training is broadened, degrees are offered in new and diverse fields, specialities are created and the true specialist, so trained, who is given new and greater responsibilities, comes closer to meeting the tests. However, just as an must be more than highly skilled technicians. Many employees in industry rise to executive or administrative positions by their natural ability and good common sense, combined with long experience with a company, without the aid of a college education or degree in any area. A college education would perhaps give an executive or administrator a more cultured and polished approach but the necessary know-how for doing the executive job would depend upon the person's own inherent talent. The professional person, on the other hand, attains status after a prolonged course of specialized intellectual instruction and study.

## Computer Programmers and Systems Analysts

At the present time, there is too great a variation in standards and academic requirements to conclude that employees employed as computer programmers and systems analysts in the data processing field are a part of a true profession recognized as such by the academic community with universally accepted standards for employment in the field. Some computer programmers and systems analysts have managerial and administrative duties which may qualify them for exemption under one of the other categories such as an executive or administrative employee.

## Predominantly Intellectual and Varied

In order to be considered a professional, an employee must be engaged in work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work.

This test applies to the type of thinking which must be performed by the employee in question. While a doctor may make 20 physical examinations in the morning and perform in the course of the examinations essentially similar tests, it requires not only judgment and discretion in this work but a continual variety of interpretation of the tests to perform satisfactory work. Likewise, although a professional chemist may make a series of similar tests, the problems presented will vary as will the deductions to be made therefrom. The work of the true professional is inherently varied even though similar outward actions may be performed.

Another example is the professional medical technologist who performs complicated chemical, microscopic, and bacteriological tests and procedures. In a large medical laboratory or clinic, the technologist usually specializes in making several kinds of related tests in areas such as microbiology, parasitology, biochemistry, hematology, histology, cytology, and nuclear medical technology. The technologist does the blood banking. The employee will conduct tests related to the examination and treatment of patients or do research on new drugs, or on the improvement of laboratory techniques, or teach and perform administrative duties. The simple, routine, and preliminary tests are generally performed by laboratory assistants or technicians. However, technologists who work in small laboratories may perform tasks that are performed by nonexempt employees in larger establishments. This type of activity will not necessarily be considered nonexempt.

On the other hand, X-ray technicians have only limited opportunity for the exercise of independent discretion and judgment, usually performing their duties under the supervision of a more highly qualified employee. The more complex duties of interpretation and judgment in this field are performed by such exempt professional employees.

## Flight Instructor:

A flight instructor may qualify for exemption as a teacher if (1) he or

she is certified in accordance with Part 61 of the Federal Aviation Regulations (14 CFR Part 61), and (2) is engaged and employed as an instructor by a flight school approved by the FAA and FAA Regulations, 14 CFR Part 141. A flight school which is approved under FAA regulations would constitute an "educational establishment".

Although there is no salary requirement for exemption as a teacher, a flight instructor must meet the 20 percent limitation on performance of nonexempt work. Exempt activities are considered to include, among other things, all student flight instruction including related ground training such as the maintenance of an airplane engine, instruction in FAA regulations, navigation, meteorology, radio procedure, maintenance of student progress and accomplishment records, scheduling of students and aircraft used for instruction, as well as maintaining liaison with the FAA for current teaching techniques and requirements.

#### OUTSIDE SALES PERSONNEL

The outside sales exemption depends on where the work is performed and whether the employee is employed to sell.

The employee is exempt if:

- (a) employed for the purpose of, and customarily and regularly works away from the employer's place of business,
  - (1) selling tangible or intangible items such as goods, insurance, stocks, bonds, or real estate; or
  - (2) obtaining orders or contracts for services or use of facilities, such as radio time, advertising, typewriter repairs. Selling these services when performed away from the employer's establishment is exempt; performing them is not exempt work; and
- (b) The hours of work in activities other than those described above do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer.

NOTE - There is no salary test for outside sales people.

#### Outside Sales Activities:

Outside sales are typically made away from the employer's place of business. Inside sales work and other work (except such as directly in conjunction with and incidental to the employee's own outside sales and solicitations) are nonexempt.

Some outside sales employees combine sales work with other activities. Drivers who deliver the employer's products and also do work concerned with selling products are often found not to be employed in the capacity

of outside sales person. All the facts regarding the job as a whole must be examined to determine whether the employee is employed for the purpose of making sales, rather than for the service and delivery duties which are performed.

#### SPECIAL PROBLEMS

##### Combination Exemption:

The "tacking" of exempt work under one of the discussed exemptions to exempt work under another is permitted so that a person who performs a combination of executive and professional work may qualify for exemption. In combination exemptions the employee must meet the stricter of the requirements on salary and nonexempt work. For example, an employee performing a combination of executive and outside sales functions (regardless of which occupies the most time) must meet the salary requirement for executive (\$155 a week). Further, the total hours of nonexempt work under the definition of "executive" together with the hours of work which would not be exempt under the outside sales exemption must not exceed either 20 percent of the employee's own time or 20 percent of the "hours worked in the workweek by the non-exempt employees of the employer", whichever is the smaller amount. In short, work which is "exempt" under one section will not defeat the exemption under any other section.

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