

## Summary of U.S. Department of Labor White Collar Exemptions from Overtime

(NOTE: The minimum salary requirements will change in 2016. While the precise rate is unknown, the DOL is projecting \$970 per week or \$50,440 annualized. Duties tests may also change.)

### Executive Exemption

#### Tests

1. Employee must be compensated on a salary basis at a rate of not less than \$455 per week.
2. Employee's primary duty (see below) must be management (see below) of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof.
3. Employee must customarily and regularly (see below) direct the work of two or more (full-time or equivalent) other employees.
4. Employee must have the authority to hire or fire other employees, or his/her suggestions and recommendations for hiring, firing, advancement, promotion, or any other change of status must be given particular weight.

#### Definitions

- "**Primary duty**" means the principal, main, major, or most important duty that the employee performs and considers the relative importance of the duty, the amount of time spent performing the duty, and the employee's relative freedom from direct supervision, among other factors. Although time alone is not the sole test, employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty test.
- "**Management**" includes, but is not limited to, activities such as interviewing, selecting, and training employees; setting and adjusting rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among employees; determining the types of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked, and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.
- "**Customarily and regularly**" means a frequency that must be greater than occasional but which may be less than constant. Tasks or work performed customarily and regularly includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

### Administrative Exemption

#### Tests

1. Employee must be compensated on a salary basis of not less than \$455 per week.
2. Employee's primary duty (see above) must be the performance of office or non-manual work directly related to the management or general business operations (see below) of the employer or the employer's customers.
3. Employee's primary duty must include the exercise of independent judgment and discretion (see below) with respect to matters of significance.

#### Definitions

- "**Directly related to management or general business operations**" includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet, and database administration; legal and regulatory compliance; and similar activities.
- "**Independent judgment and discretion**" involves the comparison and evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. Factors to consider include, but are not limited to, whether the employee has the authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree; whether the employee has the authority to commit the employer in matters that have significant financial impact; whether the employee has the authority to waive or deviate from established policies and procedures without final approval; whether the employee has the authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes, or resolving grievances.

The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures, or specific standards described in manuals or other sources. It does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent, or routine work.

An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly.

## Professional Exemption

### Tests

1. Employee must be compensated on a salary basis at a rate of not less than \$455 per week.
2. Employee's primary duty (*see below*) must be the performance of work:
  - a. Requiring knowledge of an advanced type in a field of science or learning (*see below*) customarily acquired by a prolonged course of specialized intellectual instruction ("Learned Professionals"); or
  - b. Requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor ("Creative Professionals").

### Definitions

- "Primary duty" under the professional exemption includes three elements: (1) the employee must perform work requiring advanced knowledge; (2) the advanced knowledge must be in a field of science or learning, and (3) the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
- A "field of science or learning" includes the traditional professions of law; medicine; theology; accounting; actuarial computation; engineering, architecture; teaching; various types of physical, chemical, and biological sciences; pharmacy; and others.

## Computer Exemption

### Tests

1. Employee must be compensated on a salary basis of not less than \$455 per week or on an hourly basis of not less than \$27.63 per hour.
2. Employee's primary duty consists of one or more of the following:
  - a. The application of systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional specifications;
  - b. 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;
  - c. The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
  - d. A combination of the aforementioned duties, the performance of which requires the same level of skills.

## Outside Sales Exemption

### Tests

1. Employee's primary duty (*see below*) is 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.
2. Employee must be customarily and regularly (*see above*) engaged away from the employer's place or places of business in performing such primary duty.

### Definitions

- "Primary duty" for an exempt outside sales employee can include work performed that is incidental to and in conjunction with the employee's own outside sales or solicitation including incidental deliveries and collections, writing sales reports, updating or revising the employee's sales or display catalogue, planning itineraries, and attending sales conferences.