

FLSA Designation Criteria Worksheets

Employers need to periodically review the “exempt” and “non-exempt” classification of their employees under the Fair Labor Standards Act (FLSA) and Oregon wage and hour laws to determine whether they are correctly paid. The FLSA and Oregon laws exempt executive, administrative, professional and computer (“white collar”) employees from overtime and minimum wage requirements. However, “non-exempt” employees must receive at least the minimum wage for every hour worked and must receive overtime for anything in excess of 40 hours in a work week. “Non-exempt” is the default designation, and it is the employer’s burden to prove that an employee may be considered otherwise.

With few exceptions, each of the white collar exemptions must meet the minimum salary requirement as well as a “salary basis test” and a “duties test.” The periodic review should involve a three-step process: (1) determine whether the employee meets the salary test; (2) make an initial determination whether the employee’s job meets the duties test for one of the exemptions; and (3) conduct a job analysis to determine whether the employee’s actual performance of the duties meets the exemption.

The following applies only to employees of the State of Oregon and is a compilation from several relevant sources including Bureau of Labor and Industries, Department of Labor (DOL); the Code of Federal Regulations and the Fair Labor Standards Handbook by Thompson Publishing Group.

Executive and Supervisory Exemption Worksheet

Salary Test

___ The employee must be paid on a salary basis and earn a salary of at least \$455** per week (may not prorate for half-time employee).

Job Duties Test

Exempt executives (supervisors) must meet the following duties requirements:

___ Primary duty* consists of the management of the public agency in which they are employed or of a customarily recognized department or subdivision, which has a continuing function within the organization.

- The federal regulations states that work such as the following is exempt when it is performed by an employee in the management of his department or the supervision of the employees under him: Interviewing selecting, training, adjusting pay and hours of work; planning and directing work; appraising work for the purpose of recommending promotions or other changes in their status; handling complaints and grievances and disciplinary action;

___ Supervise two or more full-time employees (or the equivalent of two or more). This does not include positions that they only supervise in the absence of the regular supervisor.

___ Has authority to hire or fire other employees; or can recommend hiring, firing, advancement, promotion, or any other change of status and their recommendations are given particular weight.

Administrative Exemption Worksheet

Salary Test

___ The employee must be paid on a salary basis and earn a salary of at least \$455** per week (may not prorate for half-time employee).

Job Duties Test

Exempt administrative personnel must meet the following duties requirements:

___ Employee's primary duty* must consist of the performance of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customer.

- To meet this requirement, an employee must perform work 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 retail or service establishment (in the context of public employment, running or servicing the agency as distinguished from carrying out its mission).
- The federal regulations (29 CFR 541.201(b)) provide the following list of "functional areas" (not specific jobs) that are generally related to management or general business operations: 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, and legal and regulatory compliance.

___ Employee's primary duty requires the exercise of discretion and independent judgment with respect to matters of significance. (This does not imply that the employee has unlimited authority and complete absence of review. It means the employee has the authority to make independent choices, free from immediate direction and supervision. Their decisions can be reviewed at a higher level. Additionally, the employee must exercise "some discretion," but not necessarily in connection with each task the employee performs).

The Thompson Publishing Group states that although a case-specific analysis is required, it is generally likely that employees who meet at least two or three of the factors listed below are exercising discretion and independent judgment.

- The employee has the authority to formulate, affect, interpret, or implement management policies or operating practices.
- The employee carries out major assignments in conducting the operations of the business.
- The employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business.
- The employee has the authority to waive or deviate from established policies and procedures without prior approval.
- The employee has authority to negotiate and bind the employer on significant matters.
- The employee has the authority to commit the employer in matters that have significant financial impact.
- The employee provides consultation or expert advice to management.
- The employee is involved in planning long-or short –term business objectives.
- The employee investigates and resolves matters of significance on behalf of management.
- The employee represents the agency in handling complaints, arbitrating disputes or resolving grievances.

Professional Exemption Worksheet

Salary Test

___ The employee must be paid on a salary basis and earn a salary of at least \$455** per week (may not prorate for half-time employee). Teachers, doctors and lawyers are not subject to this requirement.

Job Duties Test

Exempt professional personnel must satisfy the following duties requirements:

___ Primary duty*

_____ Work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (learned professional designation; or

- The DOL revised exemption regulations (29 CFR 541.301(d)) state that the phrase “customarily acquired by a prolonged course of specialized intellectual instruction” restricts the learned professional exemption to professions for which specialized academic training is a

standard prerequisite for entrance into the profession. DOL states that the best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. Generally, the employee's position description should require the employee to possess such a degree.

___ Primary duty is work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on the invention, imagination or talent of the employee (creative professional exemption), or

___ Primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge by a person employed and engaged in this activity as a teacher in the educational establishment by which they are employed, or

___ Employee who is a holder of a valid license or certificate permitting the practice of law or medicine who is actually engaged in that practice, as well as medical interns or residents holding the requisite degree, **and**

___ The work requires the consistent exercise of discretion and judgment in its performance.

Computer Exemption Worksheet:

Salary Test

___ The employee may be paid either on a salary basis or by the hour. If the employee is paid a salary, they must earn at least \$455** per week (may not prorate for half-time employee). If the employee is paid on an hourly basis, they must be paid at a rate of not less than \$27.63 per hour.

Job Duties Test

Exempt computer personnel must satisfy the following duties requirements:

___ Primary duty* is:

_____ Work requiring the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or

_____ Work involving 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, or

_____Work involving the design, documentation, testing, creation or modification of computer programs related to machine operating systems, or

_____Work involving a combination of the duties outlined above, and requires the same level of skills, **and**

_____The work requires the consistent exercise of discretion and judgment in its performance.

Points to remember for all exemptions:

- ❖ A job title or position description alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and actual duties meet the requirements of the regulations . . . (20 CFR 541.200)
- ❖ If a collective bargaining agreement (CBA) applies to an otherwise exempt employee, the employer needs to comply with the requirements of both federal and state laws and the CBA.
- ❖ Primary Duty*
 - Definition: The primary duty refers to exempt work, which must be the "principal, main, major or most important duty" that the employee performs. Some factors to consider are: the relative importance of the exempt duties as compared with other types of duties, the amount of time spent performing exempt work, and the employee's relative freedom from direct supervision.

\$455** per week = \$1,971.66 per month or \$23,660 per year

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