

Summary of FLSA Regulations

The Fair Labor Standards Act is a complex set of rules and regulations that many employers try to oversimplify. This summary gives an overview of who is exempt and who is non exempt.

These regulations specify which employees may be properly classified as exempt from the overtime provisions of the federal Fair Labor Standards Act.

The regulations include significant changes from the regulations that were first implemented in 1938 and not changed until 2004 and generally provide clearer guidance for employers to properly classify employees as exempt.

The regulations include the following key provisions:

Executive exemption

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

- The employee must be paid on a salary basis (as defined in the regulations) at a rate of at least \$455 per week (\$23,660 per year);
- 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 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) of \$455 per week or more;
- The employee's primary duty must be 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 in significant matters.

Professional exemption

There are two general types of exempt professional employees: learned professionals and creative professionals.

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

- The employee must be paid on a salary or fee basis (as defined in the regulations) at a rate of \$455 per week or more;
- The employee's primary duty must be work requiring "advanced knowledge," which means it's predominantly intellectual in character and requires 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.

Creative professionals. To qualify for the creative professional employee exemption, both of the following tests must be met:

- The employee must be compensated on a salary or fee basis at a rate of \$455 per week or more; and
- The employee's primary duty must require invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Highly compensated employees

This newly defined subcategory consists of "highly compensated" employees performing office or non-manual work who are paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis). These employees 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 exemption tests.

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 of at least \$455 per week or, if paid on an hourly basis, at least \$27.63 an hour; and
- 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:
 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 above 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.

Blue collar workers

The exemptions provided by the overtime regulations apply only to "white collar" employees who meet the salary and duties tests set forth in the 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.

This means 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 new regulations, no matter how highly paid they might be.

The full set of regulations can be viewed on line at www.dol.gov

The HR Group is available to help.

Do you know the answer to this question from one of your members?

I think nonprofits regularly have employees work far more than is legal without overtime pay. Could you elaborate on the fact that non-exempt employees can't (I don't think) "volunteer" hours for the organizations for which they work and not get paid - a BIG issue in nonprofits. Am I correct about how this works?

The Answer will be posted next week.