

Employee Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Department: \_\_\_\_\_

Date: \_\_\_\_\_

### INSTRUCTIONS:

The federal Fair Labor Standards Act ("FLSA") requires most employees to receive at least minimum wage and overtime pay at one and one-half the regular rate of pay for all hours worked over 40 during a workweek. The FLSA includes a variety of exemptions from minimum wage and overtime for certain employees. Below are factors used to evaluate some of the most common exemptions to the FLSA overtime rules. This document does not provide tests for all possible exemptions under the FLSA, only those that are most common. Also, several states have threshold requirements over and above Federal law including: AK, CA, ME, NY, CO, WA, and PA. Always check state laws to ensure compliance.

The most common FLSA exemption categories include: Professional, Administrative, Executive, Outside Sales, and Computer-Related. To qualify under any of these exemptions, all items must be checked in the affirmative for the respective exemption test. We recommend completing this form after reviewing the employee's current job description and consulting with the employee's supervisor. The full text of the federal exemption regulations is found in [29 CFR 541](#).

### SALARY REQUIREMENTS:

Typically, only salaried employees are eligible for executive, administrative, and professional exemptions. As of January 1, 2020, the salary threshold requirement under Federal law is \$684 per week minimum. Computer professionals must earn either \$684 weekly OR an hourly rate of at least \$27.63 to be eligible for an FLSA exemption. Employees who qualify for the outside salesperson exemption need not be paid any salary if their compensation is based solely on commission.

### EXEMPTION TESTS:

#### Professional (Learned or Creative) Exemption Duties Test

Learned Professional (examples: accountant, physician, engineer)

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring 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 Professional (examples: composer, singer, graphic designer)

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week; and
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Click [here](https://www.dol.gov/whd/overtime/fs17d_professional.htm) ([https://www.dol.gov/whd/overtime/fs17d\\_professional.htm](https://www.dol.gov/whd/overtime/fs17d_professional.htm)) to access the DOL's Professional Exemption Fact Sheet for additional information regarding each of these factors.

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### Administrative Exemption Duties Test (examples: manager, supervisor, administrator)

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

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;
- The employee's primary duty must be the performance of 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 with respect to matters of significance.

Click [here](https://www.dol.gov/whd/overtime/fs17c_administrative.pdf) ([https://www.dol.gov/whd/overtime/fs17c\\_administrative.pdf](https://www.dol.gov/whd/overtime/fs17c_administrative.pdf)) to access the DOL's Administrative Exemption Fact Sheet for additional information regarding each of these factors.

### Executive Exemption Duties Test (examples: chief executive officer, controller, vice president, director)

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

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$684 per week;
- 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 or more 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.

Click [here](https://www.dol.gov/whd/overtime/fs17b_executive.pdf) ([https://www.dol.gov/whd/overtime/fs17b\\_executive.pdf](https://www.dol.gov/whd/overtime/fs17b_executive.pdf)) to access the DOL's Executive Exemption Fact Sheet for additional information regarding reach of these factors.

### Outside Sales Exemption Duties Test (examples: outside sales agent)

To qualify for the outside sales employee exemption, all 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.

Please note that, unlike some of the other common exemptions, this exemption does not have a minimum salary requirement. Thus, employees qualifying for this exemption may be paid on a commission-only basis.

Click [here](https://www.dol.gov/whd/overtime/fs17f_outsidesales.pdf) ([https://www.dol.gov/whd/overtime/fs17f\\_outsidesales.pdf](https://www.dol.gov/whd/overtime/fs17f_outsidesales.pdf)) to access the DOL's Outside Sales Exemption Fact Sheet for additional information regarding each of these factors.

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### Commission-based Employees of Retail and Service Establishments (examples: inside sales agent, retail salesperson)

Retail and service establishments are defined as establishments where 75% of the annual dollar volume of sales of goods or services (or of both) is not for resale and the establishment is recognized as a retail sales or services organization in a particular industry. In order for this exemption to apply for commissioned employees, the following conditions must be met:

- The employee must be employed by a retail or service establishment, and
- The employee's regular rate of pay must exceed one and one-half times the applicable minimum wage for every hour worked in a workweek in which overtime hours are worked, and
- more than half the employee's total earnings in a representative period must consist of commissions.

Click [here](https://www.dol.gov/whd/regs/compliance/whdfs20.pdf) (<https://www.dol.gov/whd/regs/compliance/whdfs20.pdf>) to access the DOL's Retail Establishment Exemption Fact Sheet for additional information regarding each of these factors.

### Computer Employee Exemption Duties Test (examples: network or database analyst, developer, programmer, software engineer)

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 (as defined in the regulations) at a rate not less than \$684 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee's primary duty must consist of at least one of the following:
  1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or
  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; or
  3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  4. A combination of these duties which requires the same level of skills.

Click [here](https://www.dol.gov/whd/overtime/fs17e_computer.pdf) ([https://www.dol.gov/whd/overtime/fs17e\\_computer.pdf](https://www.dol.gov/whd/overtime/fs17e_computer.pdf)) to access the DOL's Retail Establishment Exemption Fact Sheet for additional information regarding each of these factors.

#### CLASSIFICATION:

Based on the above duties analysis, the employee is classified as (check one):

- Exempt     Non-Exempt

#### ACKNOWLEDGMENT:

Reviewer Name: \_\_\_\_\_

Date: \_\_\_\_\_

Reviewer Signature: \_\_\_\_\_

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