

Fair Labor Standards Act Fair Pay Exemption Questionnaire

Note to employers: This questionnaire serves as a basic outline for an employer's initial analysis of positions being considered for exemption under the Fair Labor Standards Act and is meant to serve as one of several tools in an employer's analysis. Job titles are insufficient to determine exemption status. It is strongly recommended that employers have legal counsel review analysis efforts and exemption decisions.

Position: _____

Employee: _____

Date: _____

Completed by: _____

Completion of this questionnaire helps determine the exemption status of a position. Under the appropriate exemption (Executive, Administrative, Professional, Computer-Related, Outside Sales, or Highly Compensated), check all applicable boxes. To qualify for an exemption, all boxes must be checked for that exemption.

EXECUTIVE (eg, chief executive officer, controller, vice president, director)

- Regularly receives a predetermined amount constituting all or part of the employee's salary that is not subject to reduction because of variations in the quality or quantity of work performed.
- Is paid at least \$23,660 annually (\$455 weekly).
- Primary duty consists of managing the enterprise or a customarily recognized department or subdivision of the enterprise.
- Customarily and regularly directs the work of 2 or more full-time employees or their equivalents (eg, 1 full-time employee and 2 half-time employees).
- Has the authority to hire or fire other employees **OR** makes recommendations that carry particular weight as to the hiring, firing, advancement, promotion, or any other change in status of other employees.

ADMINISTRATIVE (eg, manager, supervisor, administrator)

- Regularly receives a predetermined amount constituting all or part of the employee's salary that is not subject to reduction because of variations in the quality or quantity of work performed.
- Is paid at least \$23,660 annually (\$455 weekly).

Primary duty consists of performing office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers.

Work includes the exercise of discretion and independent judgment with respect to matters of significance.

PROFESSIONAL (Learned and Creative) (eg, accountant, nurse, engineer, composer, singer, graphic designer)

Regularly receives a predetermined amount constituting all or part of the employee's salary that is not subject to reduction because of variations in the quality or quantity of work performed.

Is paid at least \$23,660 annually (\$455 weekly). *Note:* For teachers, licensed or certified practitioners of law and medicine, medical interns, and residents covered under this exemption, the salary basis and salary requirements do **NOT** apply.

Learned Professional

Primary duty consists of the performance of work that requires advanced knowledge (beyond high school) and that is predominantly intellectual in character and consistently includes the exercise of discretion and independent judgment.

The advanced knowledge is in a field of science or learning.

The advanced knowledge was acquired by a prolonged course of specialized intellectual instruction (position possesses the appropriate academic degree or has substantially the same knowledge level and performs substantially the same work as degreed employees but possesses advanced knowledge only through a combination of work experience and intellectual instruction).

Creative Professional

Primary duty consists of the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical, or physical work.

COMPUTER-RELATED (eg, network or database analyst, developer, programmer, software engineer)

Is paid at least \$23,660 annually (\$455 weekly) **OR** \$27.63 per hour. That is, this exemption does **NOT** have to meet the salary basis requirement to regularly receive a predetermined amount constituting all or part of the employee's salary that is not subject to reduction because of variations in the quality or quantity of work performed **IF** paid at least \$27.63 on an hourly basis.

Primary duty consists of one or more of the following:

- The application of system-analyst techniques and procedures, including consulting with users to determine hardware, software, or system functional specifications
- The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs
- The design, documentation, testing, creation, or modification of computer programs related to machine-operating systems
- A combination of these duties that requires the same level of skills

OUTSIDE SALES (eg, salespersons, contract negotiators)

The salary basis and salary requirements do **NOT** apply for this exemption. That is, this exemption does **NOT** have the salary basis requirement to regularly receive a predetermined amount constituting all or part of the employee's salary that is not subject to reduction because of variations in the quality or quantity of work performed, **AND** this exemption does **NOT** have to be paid \$23,660 annually (\$455 weekly).

Primary duty consists of making sales or obtaining orders for contracts for services or for the use of facilities for which consideration will be paid by the client or customer.

Customarily and regularly is engaged away from the employer's place or places of business.

HIGHLY COMPENSATED EMPLOYEES PERFORMING EXECUTIVE, PROFESSIONAL, OR ADMINISTRATIVE DUTIES

Is paid an annual total compensation of \$100,000 or more, which includes at least \$455 per week paid on a salary basis. The required total annual compensation of \$100,000 or more may consist of commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned during a 52-week period, but does not include credit for board or lodging, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits.

Primary duty consists of performing office, nonmanual work. *Note:* No matter how highly paid, manual workers or other blue-collar workers, including nonmanagement construction workers, who perform work involving repetitive operations with their hands, physical skill, and energy are not eligible for this exemption.

Customarily and regularly performs at least one of the exempt duties or responsibilities of the Executive, Professional, or Administrative exemption.

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