

FLSA EXEMPTION CLASSIFICATION

GUIDELINES

UNIVERSITY OF CALIFORNIA

July 31, 1991

ADMINISTRATIVE EXEMPTIONComments:

The administrative exemption is meant to cover employees who are considered "white collar employees." This means that such employees must perform office or nonmanual work of significant importance directly related to the management policies or general business operations of the agency or department. The work of an administratively exempt employee must be aimed at system changes, monitoring, analysis, consultation or broad advice; not production or routine administrative maintenance of the business. It is also important for an administratively exempt employee to exercise discretion and independent judgment on a customary and regular basis. The exercise of discretion and independent judgment should not be confused with the use of a high level of skill in applying techniques, procedures or specific standards.

Generally, there are four types of employees included in the administrative exemption. These are: 1) executive and administrative assistants who generally work for an official or manager who has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence, interviews and the like must be delegated; 2) employees who act as advisory specialists to management, such as personnel directors, labor relations directors, safety directors, tax experts, wage-rate analysts, investment consultants, statisticians, credit managers, purchasing agents and buyers; 3) "special assignment employees" such as lease buyers, field representatives, and promotion employees; and 4) individuals engaged in the overall academic administration of an educational institution. Such persons must perform duties which are primarily concerned with the administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards and other aspects of the teaching program.

Administratively exempt individuals must perform work of a type which manages or directly supports management of the business. Their work must directly relate to the administrative operations of the business as opposed to the "production" aspects of the business and must be of substantial importance to the management or operation of the business. As such, the exemption is not limited to persons who participate in the formulation of management policies or in the operation of the business as a whole. The exemption includes those whose work affects policy or whose responsibility is to execute or carry policy out, such as those who carry out major assignments in conducting the operations of the business or whose work affects business operations to a substantial degree even though their assignments are tasks related to the operation of a particular segment of the business. For example, a bank cashier or a tax consultant would be considered administratively exempt, while a bank teller, bookkeepers, secretaries and clerks are generally not exempt. A statistician who makes analysis of data and draws conclusions which are important to the determination, or which determine, financial merchandising or other policies is doing work directly related to management policies or general business operations. On the other hand, a statistician who simply tabulates data would not be performing work of significant importance directly related to management policies or the general business operations.

The Department of Labor's recent interpretations of the administrative exemption have focused on whether the employee is performing "production" work or work which is directly

related to the management policies or the general business operations. For example, police officers who have the primary responsibility for the investigation of major crimes and the determination of whether to file charges have recently been found nonexempt. The DOL reasoned as follows: the police department's primary function is law enforcement. The investigative activities performed by the police officers were more akin to "day-to-day production" operations of the police department than to its management policies or general business operations. The implication of DOL's interpretation is that only those employees in strictly administrative functions (advisory specialists in personnel, budget analysis, etc.) or those who carry out the policy of the agency (staff in the management office) will be exempt.

Equally as important as the evaluation of whether an employee is performing work of a "production" nature or work which is directly related to management policies, is the discretion and independent judgment criteria. An administratively exempt employee must customarily and regularly exercise discretion and independent judgment which means that the individual compares and evaluates possible courses of conduct and acts or makes a decision after the various possibilities have been considered. The person must also have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. This criteria is most frequently misapplied in the following ways:

1. Confusion between the exercise of discretion and independent judgment and the use of skill in applying techniques, procedures or specific standards. An employee who merely applies knowledge in following prescribed procedures or determining which procedure to follow, or who determines whether specified standards are met is not exercising discretion and independent judgment as defined in the FLSA. This is true even if there is some leeway in reaching a conclusion.
2. Use of the term as applied to employees making decisions on matters of little consequence. The discretion and independent judgment exercised must be real and substantial and relate to matters of consequence to the management of the business.

Administrative Exemption Tests:

To qualify as an administratively exempt employee, all of the tests must be met in either "A" or "B" listed below. [If you need additional space for comments, use the back of these pages. Do not use separate sheets of paper.]

	<u>Yes</u>	<u>No</u>	<u>?</u>	<u>Comments/Reference</u>
A. Is the employee paid at least \$155 per week (approximately \$8,060 per year)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
1. Does the employee's primary duty (at least 50% of the employee's time) consist of either:				
a. The performance of office or nonmanual work directly related to management policies or general business operations? Or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. The performance of administrative functions in an educational establishment in work related to academic instruction or training?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Does the employee customarily and regularly exercise discretion and independent judgment on matters of significance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Does the employee do any one of the following:				
a. Regularly assist an exempt executive or administrative employee, or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. Perform work under only general supervision, along specialized or technical lines, or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
c. Perform under only general supervision special assignments and tasks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Does the employee spend 80% of his/her time in performance of the activities in 1 through 3 above?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

B. Is the employee paid a salary of at least \$250 per week (approximately \$13,000) per year?

Yes	No	?	Comments/Reference
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

1. Does the employee's primary duty (at least 50% of the employee's time) consist of either:

a. The performance of office or nonmanual work directly related to management policies or general business operations? Or

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
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b. The performance of functions in the administration of an educational establishment in work directly related to the academic instruction or training?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
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2. Does the employee's work affect policy or does the employee carry out policies determined by top management?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
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3. Are the employee's duties administrative or in direct support of the business operations of the agency?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
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4. Is the employee's work of substantial importance to the management or operation of the agency?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
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5. Does the employee's work require the exercise of discretion and independent judgment?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
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6. Is the discretion and judgment customarily exercised?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
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EXECUTIVE EXEMPTIONComments:

An exempt executive is the manager of a recognized department or subdivision of the University. The person must truly supervise at least two other employees. In fact, it is the experience of the Department of Labor that a supervisor of only two employees usually performs nonexempt work in excess of the general 20% tolerance provided for in the regulations. This person must be in charge of the unit. To get at the heart of this exemption, one might ask "do subordinate employees think of this person as 'the boss'?" The person must be a true supervisor, not a coordinator or lead worker.

"Management" generally means control of the operations, including such aspects as determining necessary resources; selection, training, assignment, and evaluation of subordinates; representing unit needs to higher levels; establishing working procedures, protocols, goals, etc. It does not include the performance of line operational tasks, or of routine tasks that do not contribute directly to the employee's managerial responsibility. Furthermore, an executive employee cannot be said to manage or control an operation if he or she has no authority to make significant decisions.

Executive Exemption Tests:

To qualify as an exempt executive all of the tests must be met in either "A" or "B" listed below. [If you need additional space for comments, use the back of these pages. Do not use separate sheets of paper.]

	Yes	No	?	Comments/Reference
A. Is the employee paid at least \$155 per week (approximately \$8,060 per year)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
1. Is the employee's primary duty (at least 50% of the employee's time) the management of a customarily recognized department or subdivision?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Is the employee's primary duty (at least 50% of the employee's time) the customary and regular direction of two or more full-time employees or the equivalent (e.g., four half-time employees)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. a. Does the employee have the authority to hire or fire other employees? Or,	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. Are the employee's suggested recommendations as to hiring or firing and as to the advancement and promotion or other personnel changes given particular weight?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Does the employee customarily and regularly exercise discretionary power? (Discretion involves the comparison and evaluation of possible courses of conduct in acting or making decisions after the various possibilities have been considered.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. a. Does the time devoted to 1 through 4 above take up 80% of the employee's time? Or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. Is the employee in sole charge of an independent establishment or a physically separated branch?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

B. Is the employee paid at least \$250 per week (approximately \$13,00 per year)?

Yes	No	?	Comments/Reference
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

1. Is the employee's primary duty (at least 50% of the employee's time) management of a customarily recognized department or subdivision?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
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2. Is the primary duty the customary and regular direction of two or more full-time employees or the equivalent (e.g., four half-time employees)?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
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[Although not specifically required under Test B, remember to consider the use of discretion and independent judgment as those qualifications are an inherent part of an executive's job.]

PROFESSIONAL EXEMPTIONComments:

The professional exemption may be applied to an employee who spends more than 50% of his or her time working as a professional in either a learned or artistic profession.

For those who work in a learned profession, the exemption requires knowledge of an advanced type, which normally means more than a high school education, in a field of science and/or learning, not the mechanical arts. The Department of Labor takes the view that the vast majority of professionals will have academic training. However, the exemption is available to the occasional person who does not possess a degree, yet has completed a lengthy course of individualized learning which results in a license or certificate, such as a lawyer or a chemist. On the other hand, a professional employee must be more than a highly skilled technician and must have participated in a prolonged course of specialized intellectual instruction and study. An individual will not qualify as a professional if he or she simply rises through the ranks to a high level position because of an abundance of talent, natural ability and exceptional common sense, but without a prolonged course of specialized intellectual instruction.

Recognized learned professions include lawyers, physicians, dentists, nurses, accountants, actuaries, engineers, architects, teachers, pharmacists, veterinarians, certified and registered medical technologists, physicians' assistants and various physical, chemical and biological scientists. The typical symbol of a professional is an appropriate academic degree and in the professions listed above advanced academic degrees are the standard prerequisite.

An artistic professional must engage in work which is original or creative in a recognized field of artistic endeavor, the result of which depends primarily on the invention, imagination or talent of the employee. The artistic professions include composers, conductors, soloists, editorial writers, columnists (who have free reign over the subject of their columns), essayists, newspaper writers of analytical and interpretative articles, critics, painters who at most are given the subject of their painting and cartoonists who are merely told the title or underlying concept of a cartoon and must rely on their own creative powers to express the concept. Examples of nonexempt work include photo retouchers, copyists, motion picture cartoon animators, and most newspaper reporters, editors and photographers.

Professional employees must devote the majority of their time to work in their "professional capacity." An employee may not be categorized as a professional just because she/he has a degree or a certain title. For example, employees who are trained, paid, and labeled as accountants, but whose work nevertheless includes a great deal of routine matters which is not an essential part of any professional work they may do, would not qualify for the professional exemption.

Professional Exemption Tests:

To qualify as an exempt professional all of the tests must be met in either "A" or "B". [If you need additional space for comments, use the back of these pages. Do not use separate sheets of paper.]

		<u>Yes</u>	<u>No</u>	<u>?</u>	<u>Comments/Reference</u>
A.	Is the employee paid a salary of at least \$170 per week (approximately \$8,840 per year)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
	1. Is the employee's primary duty (at least 50% of the employee's time) work requiring				
	a. Work of an advanced type in a field of science or learning, or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
	b. Original or creative work of an artistic type, or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
	c. Work as a certified teacher in an educational establishment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
	2. Does the work require the consistent exercise of discretion and independent judgment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
	3. Is the work intellectual and varied and of a nature that the output cannot be standardized with regard to time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
	4. Does the employee devote at least 80% of his/her time to the duties listed in 1 through 3 above?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
B.	Is the employee paid a salary of at least \$250 per week (approximately \$13,000 per year)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
	1. Is the employee's primary duty (at least 50% of the employee's time) work of an advanced type in a field of science, learning, or teaching, or work in a recognized field of artistic endeavor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
	2. Does the employee's work include tasks which require the consistent exercise of discretion and independent judgment or consist of work requiring invention, imagination or talent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____