

# **Guidelines for Evaluating Whether or Not Employees Satisfy the Executive, Administrative and Professional Exemptions from the Wage and Hour Laws.**

## **I. The White Collar Exemptions**

Federal law and most state wage/hour laws contain exemptions from overtime requirements for executive, administrative and professional employees (the so-called “white collar exemptions”). Where the exemptions apply, employers can avoid significant overtime costs and – often more importantly -- these exemptions provide a great deal of flexibility for scheduling employees.

This article summarizes the principle aspects of each of the three white collar exemptions and points out a couple of the significant traps for the unwary employer. We have also attached a set of “exempt status” forms that employers can use to assist in gathering the facts to make these important determinations.

### **A. The Basic Requirements for Treating an Employee as Exempt from Overtime.**

The principle regulations governing exempt status issues are the federal regulations written by the Wage and Hour Division of the Department of Labor. They are found in Volumes 29 of the Code of Civil Procedure, Part 5 (which starts with Section 500). When trying to determine if a particular employee (or job classification) is likely to satisfy one of the exemptions, HR specialists look at these regulations and at published Opinion Letters issued by the Wage and Hour Division in response to written inquiries by employers. Although the regulations and the Opinion Letters are not controlling law (the federal statute itself – the Fair Labor Standard Act – will govern a court’s rulings on exempt status issues) the DOL regulations effectively govern most wage/hour issues and the Opinion Letters provide insight on how the Division will apply the regulations exemption criteria. (If an employer has an unusual situation, it should consider writing to the Division and requesting an opinion for guidance on its specific issues.)

Employers must also remember to review state wage/hour laws before making a final determination on the exempt status of any employee. While most states follow **most** aspects of the federal law, there are notable exceptions that can cause significant overtime liability. (For example, in California, there are specific statutes that preclude exempting pharmacists and registered nurses as “professionals” even though the federal regulations and most other states would conclude fairly easily that both jobs satisfy the professional exemption criteria.)

As with any exemptions to wage and hour regulations, the employer has the burden of establishing that a white collar exemption applies if it is treating the employee as exempt. To qualify for exemption as an administrative, executive or professional employee, the employee

must be engaged in work that is primarily "**intellectual, managerial or creative,**" which regularly requires the exercise of **discretion and independent judgment**, and with limited exceptions discussed below, he or she must be paid on a fee or **salary basis** and not on an hourly basis.

**B. The Job Must Be Primarily Intellectual and Varied.**

Whether a particular job is predominantly intellectual and varied relates to the type of thinking that must be performed during the employee's workday. An example cited is a physician's routine examination. Even though the same questions are asked and the same sorts of routine tests are performed, the physician must constantly interpret, evaluate and make informed deductions from the patient's responses to the physician's questions and the physical symptoms observed. In such cases, the work is considered inherently varied, although the physical manifestation of the work — the examination — is routine.

Employers must be wary of ignoring the distinction between the exercise of discretion and independent judgment (which is exempt work) and the "use of skills and knowledge" to make routine decisions (which is non-exempt work). For example, field inspectors and graders make judgments; however, because their judgments are limited to decisions within narrowly drawn parameters, their decisions are not considered to be intellectual decisions as they are not sufficiently "discretionary."

**C. The Employee Must Regularly Exercise Discretion and Judgment.**

The use of discretion and judgment means that the employee applies his or her specialized knowledge to individual situations that require the exercise of discretion and judgment. Pure mechanical or routine work cannot be professional work. Legal stenographers are an example of highly skilled technicians, whose skills are acquired after a prolonged course of study, but their duties are exclusively technical and legal stenographers are not exempt. Similarly, dental hygienists will generally be considered "technical" (and non-exempt) although the DOL has recognized that with extensive (four years) pre-professional and additional professional study they might qualify as exempt. (This would require a case-by-case assessment of the actual employee's duties in the particular dentist's suite.)

Exempt employees exercise **independent judgment**. Thus, if and when decisions have to be reviewed by a supervisor, the supervisor should generally follow the recommendations of the purportedly exempt employee. Moreover, the exercise of discretion and judgment must involve "matters of consequence," of "real and substantial" significance to the policies or general operations of the business, or to the employer's customers.

**D. The Exempt Employee Must Primarily Perform Exempt Duties.**

To be exempt, the employee must be engaged in work that is "primarily" intellectual and varied, etc. The rule of thumb is that the employee must be engaged in his/her "exempt duties" for over 50% of the work week. However, under the federal rules, there is not an absolute 50%-plus rule if it is unquestionable that the employee's role is as an exempt individual. (For example, some weeks a store manager may engage in sales work for the majority of her work hours while at the same time directing the work of the other employees. Because her primary role is to act as the on-site manager, the employee will likely satisfy the executive exemption criteria; and a simple look at how the hours are spent will not control whether the particular store manager is exempt.)

**1. Incidental or Directly or Closely Related "Mundane" Tasks Will Not Destroy the Exemption.**

Tasks that are "an essential part of and necessarily incident to" the employee's discretionary duties are considered part of the employee's primary "exempt" duties. Thus, even though an employee performs menial tasks along with his or her professional, administrative or executive duties, such as straightforward interviewing and writing reports, the time spent engaged in that work will be included as time spent engaged in exempt duties in determining primary duties. For example, a social worker's duties of charting a patient's progress and maintaining medical or other treatment records are "essential and necessarily incident to" providing therapeutic service. Thus, the time spent in necessary medical charting and record keeping can be included in determining whether the employee is primarily performing professional duties.

**E. Exempt Employees Have Their Own Minimum Compensation Requirements and Must Generally Be Paid On A Salary Basis.**

**1. Minimum Compensation.**

The minimum hourly wage varies among states and several states (and the District of Columbia) have minimum wages significantly higher than the federal minimum wage. Likewise, the minimum salary thresholds necessary to satisfy exempt status varies among states and the federal act.

Under the federal regulations, the minimum salary varies in proportion to the amount of "non-exempt" duties the employee performs, as well as the specific exemption being utilized. Under each exemption, there is a "short test" (for employees on salaries of at least \$250 per week) and "long test" for employees earning smaller salaries. The minimum compensation requirements are set forth below with the discussion of each exemption, but generally speaking, (a) if the employee is paid \$250 per week, the employee only has to perform exempt duties

fifty percent (50%) of the time; but (b) if the employee earns less than a \$250 per week salary, the employee must perform exempt duties at least 80% of the time.

In most cases, exempt employees are not to be paid on an hourly basis. Instead, executive (that is, managerial) exempt employees must be paid on a **salary** basis; while most professional and administrative employees must be paid on a **salary or fee** basis.

## **2. The Salary Basis – The Employee Is Generally Entitled To A Predetermined Full Weekly Amount Regardless of Hours Worked.**

A salary basis means that the employee generally must receive at least a full **predetermined** salary for any week in which he or she performs any work, without regard to the number of days or hours worked, or the quality or quantity of work performed.

There are limited exceptions that permit deductions when an employee

(1) is absent for **a day or more** for personal reasons other than sickness or accident; or

(2) is absent for **a day or more** because of sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice providing compensation for loss of salary occasioned by both sickness and disability; or

(3) is penalized or disciplined in good faith for infractions of safety rules relating to the prevention of serious danger to the employer's premises or other employees.

The requirement that an employee receive his full salary for any work week in which he performs any work is also subject to the general rule that an employee need not be paid for any complete workweek in which he performs no work.

However, and of special concern to employers, the federal regulations make it clear that to satisfy the “salary basis” test, the employee’s **salary cannot be subject to impermissible deductions**. Thus, even if an employee’s (or a group of employees) salary has never been wrongfully reduced, if the employer does not have a well written policy describing how the salary basis will be applied, the employer is at risk of having an exempt employee’s salary wrongfully “subject to” impermissible deductions.

The salary basis requirement does not preclude converting an exempt employee's salary to an hourly basis for computerizing the payroll. Nor does the salary basis requirement preclude the payment of discretionary overtime compensation to an exempt employee; he or she may be paid any amount of overtime compensation mutually agreed upon by the employer and the employee.

### **3. The Fee Basis.**

While all of the exemptions are satisfied if the employee meets the exemption's duties tests **and** is paid on a salary basis, under the federal rules, an employee can satisfy the compensation tests for the professional or administrative exemptions (but not the executive exemption) if he or she is paid on a **fee basis** rather than a salary basis.

The fee basis means that the employee and employer have agreed on a specific sum for a single job regardless of the time required for its completion. However, the fee must also be in an amount that would equal or exceed the employee's wages if he or she were paid on a salary basis in light of the time it takes to complete the specific job.

For example, the minimum weekly salary for a professional employee under the federal rules is \$170 per week; and the regulations deem that amount to be based on a 40-hour week. If a singer (an artistic professional) is paid \$50 for a song on a 15-minute program and there is no rehearsal time required, the fee exceeds the minimum compensation required because the employee would earn well in excess of \$170 per week at the rate of \$50 per 15 minutes.

It is important to remember that the fee basis is not to be used with the executive exemption even under federal law, and to remember that state minimum wage or other compensation requirements may forbid the use of the fee basis with some or all of the state's white collar exemptions (and/or may compel the payment of significantly higher fees than required under the federal regulations).

**F. The Professional Exemption.**

1. Duties: In order to qualify as a "professional" under the federal rules, an employee must be employed in a bona fide professional capacity whose primary duty consists of:

(a) Work requiring knowledge of an advance type in a field of science or learning customarily acquired through a prolonged course of specialized intellectual instruction (which is typically at least a four-year bachelors degree); or

(b) Work that is original and creative in character in a recognized filed of artistic endeavor;

(c) Teaching; or

(d) Work that requires theoretical and practical applications of highly specialized knowledge in computer systems analysis, programming, and software engineering.

2. Discretionary and intellectual:

The work must require consistent exercise of discretion and judgment and must be predominantly intellectual and varied in character; and

3. Minimum compensation and primary duties:

Under the short test [that is, the employee performs exempt duties at least fifty percent (50%) of the time] the employee must earn at least \$250 per week on a salary or fee basis

Under the long test [that is the employee performs exempt duties for at least eighty percent (80%) of the time] the employee must earn at least \$170 per week on a salary or fee basis.<sup>1</sup>

**a) Educational Requirement.**

For the first category of professional employees (the so-called "learned professions"), there is not an absolute requirement that a

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<sup>1</sup> The federal rules have exceptions from the salary or fee bases requirements for doctors, lawyers teachers, and certain computer specialists. That is, employers may pay those categories of employees on an hourly basis – instead of a salary or fee basis -- without destroying the professional exemption. There is no minimum hourly rate specified for doctors, lawyers and teachers; however, if employers want to use the salary exception for computer specialists, the employer must pay the employee at or above \$27.63 per hour.

professional employee have a four-year college degree. However, a "prolonged course of specialized intellectual instruction and study" means typically four years beyond high school. Moreover, the federal regulations state that the best evidence of such a course of study is the appropriate academic degree. Certain "learned professions," such as Registered Nursing, can be satisfied by completion of a formal education program, even if it did not lead to a Bachelors degree.

#### **G. The Executive (Supervisor) Exemption.**

The executive exemption is generally applied to "supervisory" employees. To qualify for the executive exemption, an employee must satisfy the following requirements:

(1) the primary duty of the employee, focusing on the character of the position as whole, must be managing an enterprise or managing a customarily recognized departmental subdivision or larger unit thereof;

(2) the "manager" must customarily and regularly direct the work of two or more employees in the departmental subdivision that he or she manages.

(3) the employee must customarily and regularly exercise discretion;

(4) the employee must hire or fire subordinate employees, or effectively recommend these or other actions affecting employees;

(5) the employee must perform "primarily" exempt work; and

(6) the employee must be paid on **salary** basis.<sup>2</sup>

"Primarily" for purposes of the executive exemption under the federal rules is variable. Under the standard "short test" (where the employee earns at least \$250 per week), the rule of thumb is that the employee should spend at least fifty percent (50%) of his/her time in managerial duties. However, that test will not be determinative if it is clear that the "manager" is directing other employees and the operations of a department even though she or he is also performing sales work for the majority of the day. Under the long test, if the employee earns at least \$155 per week and spends no more than twenty percent (20%) [or in the case of retail or service establishments, no more than forty percent (40%)] of

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<sup>2</sup> We repeat that satisfaction of the federal exemptions does NOT mean the employer has satisfied more employee-favorable state laws. An employer MUST review both state and federal requirements and must satisfy the "best" of both worlds before treating the employee as exempt for the overtime laws.

his/her time in non-exempt duties, the employee may be considered an exempt manager if the other criteria are met. The federal regulations also deem an employee who is in sole charge of an establishment or of a branch of an enterprise to be “primarily” engaged in management.

#### **H. The Administrative Exemption.**

To meet the administrative exemption, the employee must satisfy the following requirements:

- (1) the employee's primary duty must consist of performing office or non-manual work **directly related to management policies or the general business operations** of an employer;
- (2) the employee must customarily and regularly exercise discretion and independent judgment;
- (3) the employee must:
  - (a) regularly and directly assist an exempt executive or administrative employee; or
  - (b) work under general supervision along specialized or technical lines; or;
  - (c) execute special assignments or tasks under only general supervision;
- (5) the employee must perform “primarily” exempt work; and
- (6) the employee must be paid on **salary or fee** basis.

Again, “primarily” for purposes of the administrative exemption is variable, and mirrors the rules governing executive exemptions described above. That is, under the standard “short test” (where the employee earns at least \$250 per week), the employee must spend at least fifty percent (50%) of his/her time in managerial duties. Under the long test, if the employee earns at least \$155 per week and spends no more than twenty percent (20%) [or in the case of retail or service establishments, no more than forty percent (40%)] of his/her time in non-exempt duties, the employee may be considered an exempt administrative employee if the other criteria are met.

#### **The Administrative versus Production Worker Dichotomy.**

The federal regulations interpreting the administrative exemption have created a trap for employers whose employees are clearly engaged in administrative-type duties by taking away the exemption if the employees' duties constitute the "commodity" of the employer. The regulations state that exempt administrative duties are limited to those types of activities relating to the administrative operations of a business as distinguished from "production" or in a retail or service establishment, "sales" work.

The dichotomy is not always easy to apply. While production workers are fairly easy to characterize in the industrial setting, the analysis has not been well-suited to the service industry. Production workers are "those whose primary duty is producing the commodity or commodities, whether goods or services, that the enterprise exists to produce." Administrative employees, in turn, are the staff persons who support the organization in those efforts, "the running of a business." For example, in one law suit, it was agreed that the nature of the business was the wholesale sales of electrical supplies. The company did NOT manufacturer electrical wiring or components. The court thus concluded that the company's inside sales persons were the production workers and not administrative employees.

The dichotomy is also illustrated with collection agents, a category of employees who often have considerable discretion in recovering delinquent debts and are treated as administrative employees. Senior collections agents for a retailer like Sears would likely be considered exempt administrative employees because Sears is characterized as a manufacturing and retails operation, and the collections agents simply service an aspect of that organization. At the same time, individuals performing the same exact duties, with the same degree of discretion, but working for a collections company that purchased bad dept from various retailers would be deemed production employees. The primary purpose of the collections company is the collection of bad debts, and the employees "producing" that service cannot be administrative employees.

Employers must remember this dichotomy when evaluating their positions for exempt status.

## **II. Combining Exemptions.**

It is possible to combine exemptions for employees who primarily exercise discretion and independent judgment, but whose work hours are distributed among administrative, executive and/or professional functions. Although the vast majority of the employee's day may be spent in exempt work, it may be impossible to tell whether or not an employee qualifies as primarily professional, primarily administrative or primarily executive. As long as the employee is performing primarily exempt work, i.e., work that is varied and intellectual, and that requires

discretion, the wage and hour regulations allow employers to make use of combination exemptions. When evaluating a combination exemption, the employee must satisfy the more stringent requirements under either of the exemptions being combined. There is no need to make a declaration that a particular employee is an exempt "professional employee" as opposed to an exempt "professional/administrative employee."

### **III. There Are Significant Financial Consequences of Improper Exempt Treatment.**

If the DOL (or the state wage/hour laws enforcement agency) audits an employer and determines that employees are being erroneously treated as exempt employees, the employer could be liable for unpaid overtime premiums for a significant period of time. Under federal law, the "look back" period is at least two (2) years, or, if the violation were found to be willful, three (3) years. Liquidated damages in an equal amount equal to the unpaid overtime could be imposed as well, essentially making an employer liable for up to double any unpaid overtime due for three years. Some state laws have four-year claims periods and both state and federal wage/hour laws authorize the award of attorneys fees to employees who challenge successfully employers for unpaid (or underpaid) overtime.

Also noteworthy: Misclassification and other wage claim law suits are increasingly being filed as class action type law suits, which substantially increases the employer's liability if the employer makes errors in determining exempt status. A claim that originates with one employee can be expanded to assert claims on behalf of **all employees** in the classification.

### **IV. Using the Attached Forms.**

As the discussion throughout this article suggests, the determination as to whether or not any particular employee or class of jobs satisfies an wage/hour exemption requires consideration of many different factors as well as a thorough understanding of the federal rules and the local state's wage orders or other wage/hour regulation. However, whenever an employer begins the exempt analysis process, the employer needs to know exactly what the employees **ACTUALLY** do. Wage and hour claims – and exempt status determinations – do not turn on fancy job titles or glossy job descriptions. Instead, these cases depend upon evaluating the individual employee's duties. Thus, the most important step in the process is for the employer to gather solid information about job duties and the relative percentage of time the employee (or various employees) spend performing distinct tasks. Regardless of whether a Human Resources director makes exempt status determinations, the employer ultimately seeks legal counsel to assist with classifying employees, or the employer requests an Opinion Letter from the Wage and Hour Division, the employer will initially need to describe clearly (and with confidence) the subject employee's duties.

The attached forms should help you make the necessary factual investigation into the appropriate classification of your workforce.

**WORKSHEET TO DETERMINE  
EXEMPT / NON-EXEMPT STATUS**

Use Checklist to analyze the exempt or non-exempt status of an employee under state and federal wage and hour laws as a *bona fide* executive, administrative, or professional employee.

\_\_\_\_\_  
Position

\_\_\_\_\_  
Department

\_\_\_\_\_  
Payroll Codes [job classification and dept.]

Number of employees in job classification:

\_\_\_\_\_

\_\_\_\_\_  
Current wage

Complete “salary basis” questionnaire for all executive, administrative or professional exemptions.

Attach current job description.

List any other documents that set forth job duties and/or functions, and attach copies (e.g., employment contract, offer letter or other correspondence, agency contract, etc.).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CHECKLIST ONE: EXECUTIVE, ADMINISTRATIVE & PROFESSIONAL ANALYSES**

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

Position: \_\_\_\_\_

Describe the employee's primary job responsibility?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I. EXECUTIVE EMPLOYEE EXEMPTION**

- A. **PRIMARY DUTY** places major emphasis on the character of the position as a whole in *managing an enterprise*, or managing a customarily recognized *departmental subdivision* or *larger unit*.

What is the unit? \_\_\_\_\_

What job classifications work in this unit? \_\_\_\_\_

To whom does this employee report? \_\_\_\_\_  
[name and title]

To whom does that supervisor report? \_\_\_\_\_  
[name and title]

What other supervisory positions exist in this unit? \_\_\_\_\_

- B. Customarily and regularly *directs the work of two or more full-time employees* in the departmental subdivision or larger unit. If he/she does not direct two or more full-time employees, he/she must direct the work of the *equivalent* of two full-time employees, such as one full-time and two part-time employees.

How many employees does this employee directly supervise? \_\_\_\_\_

Of these, how many are:      regular full-time      \_\_\_\_\_  
   regular part-time      \_\_\_\_\_  
   per Diem      \_\_\_\_\_  
   temporary      \_\_\_\_\_

How many employees are under this employees **direct or indirect** supervision? \_\_\_\_\_

Does this employee hold staff meetings: \_\_\_\_\_ Who attends these staff meetings?  
\_\_\_\_\_

Does this employee make the schedules for the employees? \_\_\_\_\_

Does this employee authorize overtime? \_\_\_\_\_

Does this employee sign off on other employees' time cards? \_\_\_\_\_

Does this employee complete or sign off on written employee evaluations? \_\_\_\_\_

Briefly describe this employee's role in the employee evaluation process:

\_\_\_\_\_  
\_\_\_\_\_

Do employee evaluation scores impact whether or not an employee receives a raise?

\_\_\_\_\_  
\_\_\_\_\_

Does this employee meet with employees to review written evaluations? \_\_\_\_\_

- C.      ***Customarily*** and ***regularly*** exercises ***discretionary***  
   powers.

Does this employee have any responsibilities for the budget for the department? \_\_\_\_\_

Briefly describe this employee's role in the budgetary process.

\_\_\_\_\_  
\_\_\_\_\_

Does this employee draft or revise policies for the unit? \_\_\_\_\_

List the last three policies this employee drafted or revised. \_\_\_\_\_

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Does this employee evaluate requests for vacation and decide who can take time off where staffing requirements preclude granting all requests?

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Can this employee send employees home early? \_\_\_\_\_

Can this employee purchase gifts or meals for employees in the unit to be paid for with the employer's funds? \_\_\_\_\_

Briefly describe two recent examples where this employee exercised discretion or made independent decisions relating to the operations of the unit/department:

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D. Can *hire* or *fire*  or *effectively recommend* changes in personnel status.

What is the employee's specific role in the hiring process?

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Can this employee create new positions? \_\_\_\_\_

Does this employee screen written applications? \_\_\_\_\_

Does this employee interview applicants or transferees? \_\_\_\_\_

Does this employee make the final decision? \_\_\_\_\_

Briefly describe the most recent hiring decision in this unit/department and this employee's specific role in that decision.

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What is this employee's specific role in the disciplinary and/or termination process?

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Briefly describe the last two times this employee issued formal discipline to employee(s):

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- E. More than 50% of the employee's hours of work in the workweek are ***directly and closely related*** to Tests 1, 2, 3, and 4, i.e., the employee performs ***non-exempt work less than 50% of his/her time***. Non-exempt work is typically work that is standardized; or involving routine mental, manual or physical processes; or requiring only general manual or intellectual ability; ***and not directly and closely related to exempt duties and responsibilities*** as outlined.

List the "staff work" [e.g., direct clinical, or non-supervisory functions] this employee perform.

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What percentage of time does this employee perform such work? \_\_\_\_\_

List other facts or notes that describe the employee's primary duties.

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F. Employee is paid on a *salary* basis.

What is the employee's weekly salary? \_\_\_\_\_

Complete the "salary basis" questionnaire.

**II. ADMINISTRATIVE EMPLOYEE EXEMPTION**

A. **PRIMARY DUTY** is performing *office or non-manual* work directly related to *management policies or general business operations* of employer in one or more of the following broad categories.

1. First type of administrative exception is “Administrative Assistant” – generally defined as someone who regularly and directly **assists** an executive or administratively exempt employee. Uses discretion, makes independent decisions.

Does this employee directly assist one or more senior management personnel?

List the person(s) this employee assist: \_\_\_\_\_  
[name and title]

Briefly describe this employee’s five most important duties:

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Does this employee have access to confidential communications?

Does this employee screen their supervisor’s calls, e-mails and/or correspondence?

Does this employee organize their supervisor’s calendar?

Does this employee arrange meetings for their supervisor?

Does this employee write drafts of correspondence or edit correspondence?

Briefly describe three examples where this employee recently exercised discretion and made independent decisions that were significant in their view:

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2. Second type of administrative exemption is “Advisory Specialists” – generally defined as someone who works only under **general supervision** along specialized or technical lines requiring special training, experience or knowledge, e.g., tax experts, statisticians, compensation analysts, marketing specialists. Uses discretion, makes independent judgments.

Briefly describe this employee’s specialized tasks:

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Where did this employee obtain the training or experience to perform these tasks?

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How long has this employee been in this field? \_\_\_\_\_

List the previous three positions this employee held:

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To whom does this employee report? \_\_\_\_\_  
[name and title]

What is this employee’s typical reporting mechanism (e.g., written memo, daily conversations, e-mails)? \_\_\_\_\_

Who else (by job classification) also reports to this employee’s supervisor?

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Does this employee have budgetary responsibilities? \_\_\_\_\_

Does this employee make purchases or enter into contracts on behalf of the employer?

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Briefly describe two recent examples where this employee has made independent decisions of significance to the employer.

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3. Third type of administrative exemption is “Special Assignments” - defined as someone who executes special assignments or tasks under only *general supervision*, (e.g., construction, oversees management reorganization specialists, development coordinators). Uses discretion, makes independent decisions.

What are this employee’s current responsibilities?

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How long has this employee had this assignment? \_\_\_\_\_

Is this assignment of limited duration or is it expected to be an on-going, indefinite assignment? \_\_\_\_\_

To whom does this employee report? \_\_\_\_\_

What is this employee’s typical reporting mechanism (e.g., written memo, daily conversations, e-mails)?

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Who else (by job classification) also reports to this employee’s supervisor?

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Does this employee have budgetary responsibilities? \_\_\_\_\_

Does this employee make purchases or enter into contracts on behalf of the employer? If yes, describe:

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Briefly describe three recent examples where this employee has made independent decisions of significance to the employer.

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- B. More than 50% of the employee's hours of work in the work week are *directly* and *closely related* to Tests 1, 2 and 3, i.e., employee performs *non-exempt work less than 50% of his/her time*. Non-exempt work is typically work that is *standardized*; or involving *routine* mental, manual or physical processes; or requiring only general manual or intellectual ability; and *not directly and closely related to exempt duties and responsibilities* as outlined.

What percentage of time does this employee perform routine clerical duties such as typing from dictation or written drafts, filing, or opening/distributing correspondence?

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C. Employee is paid on a *salary* or *fee* basis.

Describe the employee's compensation scheme:

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If the employee is paid a salary, what is the employee's current weekly salary?

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Complete the "salary basis" questionnaire.

If the employee is paid on a fee basis, describe:

(a) The project assigned to the employee

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(b) The agreed upon fee: \_\_\_\_\_

(c) The length of time it takes to complete the project:

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**PROFESSIONAL EMPLOYEE EXEMPTION**

Includes the professions of Law, Medicine, Dentistry, Pharmacy, Optometry, Engineering, Teaching, Accounting or other occupation commonly recognized as a *learned or artistic* profession.

- A. **PRIMARY DUTY “Learned Professions”** is performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

What is this employee’s profession? \_\_\_\_\_

Is this employee licensed by the State? \_\_\_\_\_

List all license(s) this employee holds:

\_\_\_\_\_  
\_\_\_\_\_

List any national or Board certifications this employee holds:

\_\_\_\_\_  
\_\_\_\_\_

What is this employee’s educational background [include all degree(s) held and major(s)]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- B. **PRIMARY DUTY “Artistic Professions”** is performing work that is original and creative in character in a recognized field of artistic endeavor.

What is this employee’s profession? \_\_\_\_\_

Is this a recognized artistic field such as music, writing, the theatre, the plastic or graphic arts? \_\_\_\_\_

How does the work depend primarily on the invention, imagination or talent of the employee?

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Is the work original and creative in character, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training.

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In writing professions, describe whether the employee's work depends primarily upon invention, imagination and talent or is the work dependent more on diligence and accuracy?

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C. **PRIMARY DUTY** is **teaching**.

Describe the employee's teaching duties:

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D. **PRIMARY DUTY “Computer Specialists”** is work that requires theoretical and practical applications of highly specialized knowledge in computer systems analysis, programming, and software engineering teaching.

Does the job require the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functions specifications? \_\_\_\_\_ If yes, explain:

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Does the job involve 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? \_\_\_\_\_ If yes, explain:

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Does the job involve the design, documentation, testing, creation or modification of computer programs related to machine operating systems? \_\_\_\_\_ If yes, explain:

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Does the job involve a significant amount of non-exempt technical duties such as installing hardware and/or wiring computers, printers and network rooms; moving or installing desk top computers for other staff members; or installing pre-packaged software without significant customization? \_\_\_\_\_ If yes, explain:

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- E. Work requires the consistent exercise of *discretion* and *independent judgment*. Compare alternatives; make independent decisions.

Briefly describe the basic job duties this employee performs on a daily basis:

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Does this employee perform assessments on individuals (patients, applicants for credit, employment) or assessments of quality of merchandise? \_\_\_\_\_ If yes, explain how:

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Does this employee review records for diagnostic, risk assessment or billing purposes?

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- F. Performs work predominantly *intellectual* and varied in character with an output or result that cannot be standardized in terms of time.

What is the primary mechanism for reporting this employee's conclusion(s) (e.g., verbal conversation/counseling, written reports or memos, completion of medical records or other types of pre-printed forms)?

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List the sources for professional standards that govern this employee's duties (e.g., national protocols or boards, state licensure obligations, trade association standards, etc.).

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- G. At least 50% of the employee's hours of work in the workweek are an essential part of and necessarily incident to Tests 1, 2 and 3; i.e., the employee performs ***non-exempt work less than 50% of his/her time***. Non-exempt work is typically work that is ***standardized***; or involving ***routine*** mental, manual or physical processes; or requiring general manual or intellectual ability; and is ***not an essential part of and necessarily incident to exempt duties and responsibilities*** as outlined.

What percentage of this employee's work day involves the performance of any form of clerical duties? \_\_\_\_\_

Describe those duties:

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Are any of those duties required because of this employee's professional license or professional standards (e.g., entries into individualized records)? \_\_\_\_\_

- H. Employee is paid on a ***salary*** or ***fee*** basis.

Describe the employee's compensation scheme:

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If the employee is paid a salary, what is the employee's current weekly salary?

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Complete "salary basis" questionnaire.

If the employee is paid on a fee basis, describe:

(a) The project assigned to the employee

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(b) The agreed upon fee: \_\_\_\_\_

(c) The length of time it takes to complete the project:

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## SALARY BASIS.

Please provide the following information regarding compensation policies or procedures **for salaried employees treated as exempt from overtime**. (If there are different policies applicable to different classifications, or to different levels of management, please indicate where such differences exist and explain the differences):

I. Are salaried employees expected or required to complete time or attendance forms? (Y) (N).

If “Yes,” please answer the following;

- A. Is their purpose simply to record presence at, or absence from, work? (Y) (N).
- B. If the employees record hours, are they to enter a fixed number of hours each day and every day (e.g., 8, 12, etc.), regardless of how many hours are actually worked? (Y) (N).
- C. If they record hours, are there circumstances where they are supposed to enter more hours than the regular or normal work day? (Y) (N). If so, please explain.

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D. If they record hours, are there circumstances where they are supposed to enter less hours than the regular or normal work day? (Y) (N). If so, please explain.

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E. If they record hours, in what increments are they supposed to record them (e.g., rounded to 1/4 hour, 1/2 hour, 1/4 day, 1/2 day, etc.)?

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- II. If “Yes,” please provide copies of all policies and procedures relating to paid sick leave, vacation, paid time off (PTO) and/or compensatory time off policies applicable to salaried employees treated as exempt from overtime.
- III. Are any salaried employees eligible for additional compensation or compensatory time off for working in excess of 40 hours per week or over 8 in one day, or in excess of some other specified number of hours? (Y) (N). If so, please explain.

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- IV. Are any salaried employees eligible for periodic or annual bonuses based upon their performance or the performance of others? (Y) (N). If so, please explain.

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- V. If salaried employees have accumulated vacation or paid time off (PTO), are their accruals ever charged for less than a full day’s absence? (Y) (N). If so, please explain.

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- VI. Are there circumstances (e.g., insufficient vacation or PTO credits) when salaried employees are subject to a reduction in pay if they arrive late to, or leave early from their work? (Y) (N). If so, please explain.

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- VII. If a salaried employee takes time off because of sickness for less than a full day, are such absences charged against the employee’s accumulated paid sick time or PTO? (Y) (N). If so, please explain.

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VIII. Under the circumstances described in No. 7, if the employee has insufficient sick leave PTO, is the employee's salary reduced for a partial day illness? (Y) (N). If so, please explain.

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IX. Where a salaried employee takes off less than a full day of work, or leaves during the course of the regular work day, for personal reasons (e.g., personal banking, shopping, reasons related to other family members, doctor's appointment, to attend a sporting event, etc.), and has accumulated paid time (e.g., vacation, PTO, etc.), are such absences charged against the accumulated PTO? (Y) (N). If so, please explain.

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X. Where a salaried employee takes off time as described in No. 9, above, are there any circumstances (such as, for instance, where the employee has no, or too little, accumulated paid time) in which the employee's pay is or could be reduced as a result? (Y) (N). If so, please explain.

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XI. Where a salaried employee takes off less than a full work week for jury duty are there any circumstances in which the employee's pay is or could be reduced as a result? (Y) (N). If so, please explain.

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XII. Where a salaried employee takes off less than a full work week for attendance as a witness, are there any circumstances in which the employee's pay is or could be reduced as a result? (Y) (N). If so, please explain.

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XIII. Where a salaried employee takes off less than a full work week for temporary military leave, are there any circumstances in which the employee's pay is or could be reduced as a result? (Y) (N). If so, please explain.

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XIV. Where a salaried employee takes off time during the work week as described in Nos. 11, 12, and 13, above, does the Facility offset any amounts received by the employee as jury or witness fees or military pay for a particular week against the salary due for that particular week? (Y) (N). If so, please explain.

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XV. Are there any circumstances (or has it occurred) where a salaried employee is sent home from work (or told not to come to work) due to insufficient work? (Y) (N). If "Yes," is (or was) the employee's salary reduced?

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XVI. Are there any other circumstances whatsoever (such as, for instance, disciplinary action, i.e., suspension/reduction in pay) where a salaried employee's pay is or could be reduced for less than a full week's absence? (Y) (N). If "Yes," please explain each such circumstance.

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XVII. Are there any other circumstances where a salaried employee is absent from work for less than a full day in which the employee's pay is or could be reduced as a result? (Y) (N). If so, please explain.

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XVIII. If the answer to Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 15 or 16 above, is "Yes," what is the smallest increment of time which could be charged against the employee's accumulated paid time, or by which his/her pay could be reduced (e.g., 1/4 hour, 1/2 hour, 1 hour, 1/4 day, 1/2 day, etc.)? If it varies according to the circumstance, please explain.

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Please provide copies of all written policies and procedures on compensation, pay practices, attendance, and timekeeping that are applicable to salaried employees treated as exempt from overtime.

HUMAN RESOURCES DEPARTMENT USE ONLY

EXEMPTION STATUS

Duties: \_\_\_ non-exempt \_\_\_ exempt

Salary basis: \_\_\_\_\_

(Computer Specialist Hourly rate: \_\_\_\_\_)

Approved \_\_\_\_\_

Date \_\_\_\_\_

NOTES

EXEMPTION CLASSIFICATION

\_\_\_ Executive

\_\_\_ Administrative

\_\_\_ Professional

\_\_\_ Computer Specialist

\_\_\_ Combination