

“White-Collar” Exemptions

The Most Commonly Used Exemptions Under the Fair Labor Standards Act (FLSA)

The difference between exempt and nonexempt employees is perhaps one of the most complex and confusing aspects of the Fair Labor Standards Act (FLSA).

Most employees whose jobs are covered under the FLSA are considered nonexempt, but the law does provide exemptions from both the minimum wage and overtime pay requirements for certain classes of employees.

The most commonly used exemptions under the FLSA are five “white-collar” exemptions. Below are the tests that must be met for an employee to qualify.

EXECUTIVE EXEMPTION

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

- The employee must be compensated on a salary basis at a rate not less than \$684/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 full-time employees (or equivalent); and
- The employee must have the authority to hire or fire employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of the status of other employees must be given particular weight.

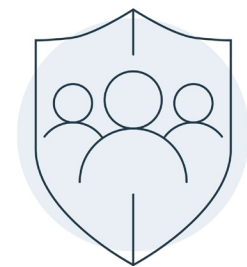
ADMINISTRATIVE EXEMPTION

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

- The employee must be compensated on a salary basis at a rate not less than \$684/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 employer’s customers; and
- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Know Your Local and State Requirements

Many states and cities/ municipalities establish their own FLSA standards that are often more stringent than federal requirements. Generally, employers should follow the law that provides the highest standard of protection to employees and the strictest standard for employers.



PROFESSIONAL EXEMPTION

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

- The employee must be compensated on a salary basis at a rate not less than \$684/week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work that is predominantly intellectual in character and that 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.

COMPUTER EXEMPTION

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

- The employee must be compensated either on a salary or fee basis at a rate not less than \$684/week or, if compensated on an hourly basis, at a rate not less than \$27.63/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.
- The employee's primary duty must consist of:
 - The application of systems analysis 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, including prototypes, based on and related to user or system design specifications;
 - The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
 - A combination of the aforementioned duties, the performance of which requires the same level of skills.

OUTSIDE SALES EXEMPTION

To qualify for the outside sales exemption, all of the following tests must be met:

- The employee's primary duty must be making sales, 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.

To be "compensated on a salary basis" means that an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work.

The responsibility to maintain FLSA compliance is placed squarely on the shoulders of the employers, but businesses don't have to bear the burden of FLSA compliance alone.

If you're starting to think that your business doesn't have the resources to keep up with FLSA compliance, you're not alone. Many employers decide they don't have the time or expertise to handle these kinds of human resources compliance and other administrative functions and decide to outsource their HR instead.

If complying with the FLSA, ADA, and other employment laws has you feeling out of your depth, contact G&A Partners today to learn how our experts can minimize the burden of HR compliance.

This resource guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.