

Fair Labour Standards Act Revisions - 2004
D.O.L. FAIRPAY REGULATIONS

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D.O.L. FAIRPAY REGULATIONS

Start Date -August 23, 2004

For the next few weeks, employers nationwide should be reviewing their internal policies, procedures and classifications of employees as the Aug 23 deadline approaches for the new DOL's FairPay regulations. Employers should begin an "exemption audit" under the new regulations and be ready for the said date, but should also keep an eye on Congress as some of the Democrats are saying they still hope to block the new rules from taking effect. However, start preparing for the deadline but don't officially implement them until the date has passed.

The following information should help you get started with an audit and should also give you some insight into the new regulations.

First and foremost, you should generate an audit plan. Determine what the scope of the audit should be. As the new regulations deal primarily with white-collar exemptions, you might want to limit your audit to review exempt and non-exempt status of employees under those exemptions. You also might want to review and revise your employment policies and practices~mainly the policies that may allow for disciplinary suspension without pay (as per the new regulations). Once you have determined what your audit will consist of, determine who will conduct it.

Job Classifications Review:

Compile a list of all employees, their job titles, job descriptions, salaries and how they are currently classified. One of the most important steps is to make sure the job descriptions are accurate- this might entail you visiting personally with certain employees to make sure you are fully aware of the duties they perform. Asking the Manager to assist with this aspect is important- keep an eye for discrepancies in what the Manager states the employee does and what the employee states he or she actually does for your company. It is the actual duties performed by the employee that determine exempt status.

Take the simplest employees first- the ones you know are either exempt or non-exempt. Remember, a job title alone does not determine exemption status. For employees whose status needs to be clarified further, use the following steps to assist you:

- 1) Run through your employee files and set aside the employees you know clearly do or do not meet the exemption tests. Move on with the ones who are more difficult to classify.
- 2) Identify the employees who are paid a salary of less than \$455 per week (the minimum salary required for an employee to be exempt from overtime pay under the new regulations) These employees are **AUTOMATICALLY** considered **EXEMPT** and are entitled to overtime pay even if they perform exempt duties. If you don't want to raise their pay to meet the minimum, you will need to reclassify them. However, if you are willing to pay employees more money to save their status, you

will need to evaluate whether their duties and responsibilities still meet the new exempt duties tests.

- 3) Next, separate the remaining employee files into those who are currently classified as exempt and those who are classified as non-exempt. For the exempt employees, group the files by the exemption under which the employees are classified. Now review each remaining employee's file to determine whether they should be classified as exempt under the new regulations. Review the exempt employees first because you should already have an idea of what exemption they might fall under.

Make Status Determinations:

Now that you have all the employees and their current status and information in front of you, you need to review the new regulations to determine whether employees are exempt or non-exempt as of Aug 23, 2004.

At the end of this packet, you will find a checklist that you may use in your audit process. This sheet should help you walk through the process in regards to the new regulations.

Determine The Need To Reclassify Employees:

Once the analysis is complete for all employees, take a few days to review what the next step will be. Develop a plan to communicate your findings to the employees that this will impact. You will need to explain the new regulations and the audit questions and how you came to your conclusions. You could run across some resistance or some "attitude" as some non-exempt employees who are used to overtime pay, may now be classified as exempt. Just as someone who is classified as exempt may now have to fill out a time card. With this said, there is nothing in the new regulations that prevents the Employer from modifying the employee's duties or pay in an effort to maintain or change their exempt status.

Ex: for employees who don't meet the new minimum salary requirements but otherwise satisfy one of the white-collar exemptions, you can save their exempt status by raising their pay to at least \$455 per week.

For the other scenario, if a formerly non-exempt employee meets a white-collar exemption under the new regulations, there are different things you can do to preserve the current status(should you decide that's in the best interest for everyone).

- 1) Even if you leave everything the same (pay and duties), you can simply STILL pay the overtime.

- 2) You can still pay those employees on an hourly basis (since exempt employees must be paid a salary)
- 3) Pay them a salary but increase their pay to make up for the overtime loss.
- 4) Rearranging job duties so that employees don't meet the relevant exempt duties test.

Revise Job Descriptions:

After you have reviewed all of your employees exemption status, make sure you revise job descriptions for the employees whose status has changed.

NOTE- Don't forget that many states have their own wage and hour laws. If they impose stricter requirements than the FLSA, then you have to comply with those requirements.

GENERAL LAW REGARDING OVERTIME PAY

To be denied overtime under white-collar exemptions, an employee must:

- 1) perform the exempt duties of an executive, administrative, professional, computer, or outside sales employee.
- 2) be paid on a salary basis
- 3) be paid a salary that at least equals the minimum salary requirements

These three areas are what have been modified for the new FairPay regulations. These areas will be discussed further into this training packet. However let's review some of the definitions and meanings that are extremely important.

Exempt Duties:

This phrase refers to the substantive duties required to be performed under an exemption (not including the minimum salary or salary basis requirements) This includes work that must be a primary duty under a given exemption, work that must be performed customarily and regularly, and other required characteristics such as having the authority to hire and fire other employees.

Primary Duties:

This is defined as the main, principal or most important duty the employee performs. Whether an employee performs the primary duties required under a particular exemption depends on an analysis of all the facts, but the most important factor is the character of the job itself. These factors need to be considered as well:

- The relationship between the employees salary and the wages paid to other employees for the same kind of non exempt work
- The employee's relative freedom from direct supervision
- The amount of time spent performing exempt work
- The relative importance of the exempt duties as compared with other types of duties

A good example is if the employee spends more than 50% of her time performing exempt work, the primary duty test will be generally met. However, if an employee spends less than 50% of her time on exempt work, it may still be her primary duty if other relevant facts support that conclusion. In addition, employees may be exempt if they perform a combination of exempt duties under different exemptions.

Exempt Work:

This is defined as the specific exempt duties listed in the various exemptions plus any non-exempt work that is directly and closely related to the exempt work performed. Also defined as the tasks that are related to exempt duties and that contribute to or facilitate the performance of exempt work such as:

- Physical tasks and menial tasks that arise out of exempt duties
- Recordkeeping
- Taking notes

- Using the computer to create documents or presentations
- Opening the mail for the purpose of reading it and making decisions

Customarily and Regularly:

The definition here states that work must be performed more than occasionally. This is a far lower standard than the “primary duties” test. It includes work that is normally and recurrently performed every workweek but doesn’t include isolated or one-time tasks.

Minimum Salary Requirements:

The majority of the white-collar exemptions require employees to be paid a minimum salary of \$455 per week exclusive of board, lodging, and other facilities. Unless otherwise noted in this training packet, any employee who makes less than \$455 per week must be paid overtime regardless of their job duties.

Salary Basis Test:

Exempt employees must be paid a set salary that employers may not reduce due to variations in the quality or quantity of their work. With some exceptions, employees must be paid their full and complete salary for any week in which they perform work or are ready, willing and able to work.

OVERVIEW of PROPOSED REGULATIONS

The list below contains some of the major changes that we will discuss further:

- 1) The exempt duties test has been simplified and clarified for each job classification. As opposed to a short and long test, there is now only one general test.
- 2) Under the exempt duties test for administrative duties, it is now more clarified as to what “exercising discretion and independent judgment” means.
- 3) The new regulations specifically list dozens of job classifications that generally do or do not qualify as exempt under any of the white-collar exemptions.
- 4) \$455 per week is the new minimum salary (exclusive of board, lodging, and other facilities)
- 5) Employers may now deny overtime to highly compensated employees:
 - a) make at least \$100,000 per year in total annual compensation, including at least \$455 per week on a salary or fee basis.
 - b) Perform non-manual or office work
 - c) Customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee.
- 6) Employers are now allowed to suspend an exempt employee for misconduct in one-day increments (as opposed to a week increment)
- 7) There is a safe harbor provision limiting liability for employers that fix improper deductions from an exempt employee’s pay.
- 8) The format of the regulations has been dramatically improved. All of the relevant provisions regarding the white-collar exemptions now appear together in one section.

EXEMPT DUTIES

With all the controversy that has surrounded these proposed regulations, after it's all said and done, there will be far more white-collar employees eligible for overtime than before. For the exempt duties test, the biggest impact is likely to be seen under the executive exemption. Keep in mind, however, that employees who are in training to become an executive, administrative, professional, computer professional, or outside sales computer employee but don't actually perform exempt duties don't qualify for the exemption.

Executive Employees:

Examples of: Officers and Directors, regional, branch and department managers, procurement managers, some other managers (depending on their specific duties and responsibilities)

To be exempt from overtime pay, and executive employee must:

- 1) Make at least \$455 per week, exclusive of board, lodging or other facilities.
- 2) Have the primary duty of management of the enterprise in which he is employed or a customarily recognized department or subdivision thereof.
 - Interviewing, selecting and training employees*
 - Setting and adjusting rates of pay and hours of work*
 - Directing the work of employees*
 - Maintaining production or sales records for use in supervision or control*
 - Appraising employees productivity and efficiency*
 - Handling employee complaints*
 - Disciplining employees*
 - Planning the work*
 - Providing the safety of employees or property*
 - Controlling the flow and distribution of materials*
- 3) Customarily and regularly direct the work of at least 2 other employees or their equivalent
 - Two full time employees or their equivalent (such as four half time employees)*
- 4) Have the authority to hire or fire other employees, or their suggestions and recommendations about the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight. (examples)
 - Whether it is part of the employee's job duties to make such suggestions and recommendations;*
 - How frequently she makes them or they are requested; and*
 - How frequently they are relied upon.*

Bottom line for Executive Exemptions:

More employees will qualify for overtime.

Watch out for employees who were exempt but DON'T have substantial input into personnel matters such as hiring, firing and compensation. However, to preserve their status, give them the authority to hire or fire.

Administrative Employees:

Examples of: insurance adjusters, management consultants, assistant retail buyers, purchasing agents, investment consultants, executive and administrative assistants.

To be exempt from overtime pay, an executive employee must:

- 1) Make at least \$455 per week, exclusive of board, lodging or other facilities.
- 2) Must have the primary duty of performing office or non-manual work that is directly related to the management or general business operations of the employer or its customers

To meet this requirement, an employee's work must be related to assisting with the running or servicing of the business. Examples:

- *Tax, finance, accounting, budgeting, auditing*
 - *Safety and health*
 - *Quality control*
 - *Purchasing and procurement*
 - *Public relations*
 - *Legal and regulatory compliance*
 - *Advertising, marketing and research*
 - *Personnel management, human resources, employee benefits and labor relations*
 - *Computer network, internet and database administration*
- 3) Must include the exercise of discretion and independent judgment with respect to matters of significance.

The exercise of discretion and independent judgment involves (1) comparing and evaluating possible courses of conduct, and (2) acting or making a decision after the various possibilities have been considered. This means that the employee has authority to make an independent choice, free from supervisory direction, but it doesn't mean he or she must have unlimited authority. The fact that an employee's decisions may be reviewed, revised or reversed doesn't mean the employee isn't exempt. Nor does the fact that a number of employees perform the same or similar work. "Matters of significance" refers to the level of importance or consequence of the work performed.

Factors to consider if an employee exercises discretion and judgment:

- *Has authority to negotiate and bind the company on significant matters*
- *Has authority to formulate, affect, interpret, or implement management policies and operating practices*
- *Carries out major assignments in conducting the operations of the business*
- *Performs work that affects business operations to a substantial degree, even if the employees' assignments are related to operation of a particular segment of the business.*
- *Has authority to waive or deviate from policies and procedures without approval*
- *Has authority to commit the employer in matters that have significant financial impact*
- *Provides consultation or expert advice to management*
- *Is involved in planning long or short term business objectives*
- *Investigates and resolves matters of significance on behalf of management*
- *Represents the company in handling complaints or resolving grievances*

Bottom line for Administrative Exemptions:

The new DOL's exempt duties test is an effort to clearly define the line between exempt and non-exempt employees that fall under the Administrative exemption. Time will tell if the new regulations have helped clarify this exemption for Employers.

Academic Administrative Employees

Examples of: School superintendents and assistants, school principals and vice principals, academic counselors, department heads in institutions of higher education, other employees with similar responsibilities. (not included under this exemption are employees who are not related to the academic operations and functions in a school, such as : maintenance, school nurses, social workers, lunch room managers and dieticians)

The new regulations also provide a separate minimum salary and exempt duties test for employees in an academic setting. To fall under this exemption an employee must:

- 1) Make at least \$455 per week in salary or fee basis, exclusive of board, lodging or other facilities, OR be paid a salary that is at least equal to the entrance salary for teachers in the educational establishment where they work;

- 2) Have the primary duty of performing administrative functions that are directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

Educational establishments:

- *Elementary and secondary school systems*
- *Institutions of higher education (colleges and universities)*
- *Both public and private schools*
- *Both for-profit and not-for-profit schools*

Professional Employees:

Examples of: Lawyers, Teachers, Engineers, architects, Accountants, Doctors, Physicians assistants, Scientists (physicists, chemists and biologists), Registered nurse, Dental Hygienists, Pharmacists.

The new professional employee exemptions are now divided into sections for the learned professionals, creative professionals, teachers, and lawyers and doctors.

Learned Professionals have 2 requirements:

- 1) Be paid at least \$455 per week on a salary or fee basis exclusive of board, lodging, or other facilities; and
- 2) Have the primary duty of performing work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

Creative Professionals also have 2 requirements:

- 1) Be paid at least \$455 per week on a salary or fee basis exclusive of board, lodging, or other facilities; and
- 2) Have a primary duty of performing work that requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

This exemption does not apply to work that can be produced by a person with general manual or intellectual ability or training. A recognized field of artistic or creative endeavor includes such fields as music, writing, acting and the graphic arts. Some examples of exempt creative professionals include actors, musicians, composers, conductors, soloists, novelists, and some journalists.

Doctors, Lawyers, and Teachers:

- 1) There are no minimum salary requirements for these positions, as long as they perform the duties required of them under the professional exemption.
- 2) Teachers must have the primary duty of “teaching, tutoring, instructing or lecturing in the activity of imparting knowledge” A teaching certificate is not a prerequisite for the exemption if one is not required of teachers by the school where they work.

- 3) Lawyers and Doctors are covered by the exemption if they are licensed to practice law or medicine. This includes Doctors who have a degree in medicine and are engaged in an internship or resident program.

Computer Professional Employees:

Examples of: computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field.

To be exempt from overtime pay, computer professionals:

- 1) Make at least \$455 per week, exclusive of board, lodging or other facilities, OR must be paid on an hourly basis at a rate of not less than \$27.63 per hour.
- 2) Must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field.
- 3) have one of the following as their primary duty:
 - 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 program related to machine operating systems or
 - A combination of the above

Nonprofessional Computer Employees where exemptions DO NOT apply (but could be exempt under one of the other white-collar exemptions):

- 1) Employees engaged in the manufacture or repair of computer hardware or related equipment.
- 2) Employees whose work is highly dependent on or facilitated by the use of computers and computer software programs but who aren't in computer systems analysis and programming or other similarly skilled computer related occupations.

Outside Sales Employees:

To be exempt as an outside sales employee:

- 1) Employees must have the primary duty of making sales or obtaining orders or contracts for services or the use of facilities.
- 2) Employees must be customarily and regularly engaged away from the employer's place of business in performing their primary duty.
- 3) There is still no minimum salary requirements for this type of employee.

Additional Considerations:

- * Employers no longer have to keep track of outside sales employees work hours.
- * Non-sales work that is incidental to or furthers the employer's sales efforts is also considered exempt work (even if performed at the employers office)
- * The services sold don't have to be performed by the employee making the sale
- * Promotional work is exempt work only if it's performed incidental to and in conjunction with the employees own outside sales.
- * Drivers who sell and deliver products may be exempt if their primary duty is making sales.

SALARY BASIS TEST

The new regulations have added a new exception that allows an employer to dock exempt employees' pay to discipline them for violations of workplace policies and procedures. The new "disciplinary suspensions" rule should give the employer greater flexibility to suspend exempt employees without pay as punishment for violating internal company policies.

Additionally, DOL has created new protections for employers who make improper deductions from exempt employees' salaries.

Deductions From Pay:

Examples of: Leave taken by employees (4 ways), violating safety rules, disciplinary reasons, and first and last week of work (payment in proportion to days worked)

Leave Related Absences

- An employees' pay can be reduced when he/she is absent for at least a full day due to sickness or accident. (must be in accordance with a bona fide sick or disability leave policy) This includes employees who haven't worked long enough to accrue leave, as well as employees who have exhausted all of their paid time.
- An employer can make deductions from exempt employees' salaries when they are absent for at least a full day for personal reasons other than sickness or accident.
- Employers who are covered by the FMLA can make deductions from an exempt employees' salary when they take FMLA leave – even if they are gone for less than a full day. (ex: an employee who qualifies for leave and comes in 4 hours late due to a Drs visit, those 4 hours can be deducted from his/her pay)
- When an exempt employee is out due to jury duty, attendance as a witness at a trial, or military duty, an employer CAN NOT deduct the absences from their salaries but can subtract the amount the employee receives in jury fees, military pay and witness fees.

Deductions for Safety Violations

- Employers may deduct if an employee violates a safety rule of major significance- defined as rules that relate to the prevention of serious danger in the workplace or to other employees.
- The "amount" deducted is at the discretion of the employer (based on the severity of the infraction) Example: smoking a cigarette near an oil refinery

would require a deduction (as it is a serious violation) but smoking a cigarette in a bathroom would only violate a general no-smoking policy which wouldn't be fit for docking an employees pay, but may warrant some type of written or verbal warning.

Disciplinary Suspensions

- Employers may suspend only in full-day increments.
- Punishment must be imposed in good faith and
- Punishment must be made under a written policy applied uniformly to all workers

Less Than A Full Weeks Pay

- For a new employees' first week of work and for the last week of work for a separating employee, it is now allowed for an Employer to pay a proportion of their salary should the employee work less than the full week.

Additional Considerations:

- * The Regulations don't define what type of infractions (misconduct versus performance) this should include- it is much safer to impose these type of suspensions for clearly defined misconduct related issues.
- * An Employer should also clearly state in the corrective or progressive disciplinary policies that unpaid suspensions is also a form a discipline (please revise your current policies to include this language)

Effect of Improper Pay Deductions:

Under the new regulations, the potential penalty for improper pay deductions has been lessened. In most circumstances, the exemption is lost only

- (1) during the time period in which the improper deductions were made, and
- (2) for employees in the same job classification working for the same manager responsible for the actual improper deductions.

General Rules:

- 1) The exempt status is lost if the facts demonstrate that the employer did not intend to pay the employee on a salary basis, and
- 2) The employer had an "actual practice" of making improper pay deductions (here are some examples to determine if an employer had an actual practice of making these type of deductions)
 - The number of improper deductions made, particularly as compared to the number of employee infractions warranting discipline;
 - The time period during which improper deductions were made
 - The number and geographic location of employees whose salary was improperly reduced;

- The number and geographic location of managers responsible for taking the improper deductions; and
- Whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

Safe Harbor:

If employers use the following guidelines, they are protecting themselves as well as the exempt status of the employee if an improper deduction is made

- Reimburse employees for any improper deduction, and make a good faith commitment to comply with your policy in the future.
- Have a clearly stated policy that prohibits improper pay deductions and include a complaint procedure for employees as well.

**NOTE- Create a policy for this purpose
and distribute to all employees.**

Fee Basis Compensation:

Exempt administrative and professional employees may be paid on a fee basis instead of a salary basis. A specific sum of money is agreed to be paid to an employee for a single job regardless of the time spent completing the job. Employers must determine if the payment meets the minimum salary requirement of \$455 per week.

- 1) Determine the hours worked by the employee for the assigned job
- 2) Divide the amount you paid for the work by the number of hours the employee worked on it (for an hourly rate)
- 3) Multiply that hourly rate by 40 to determine whether it equaled at least \$455 per week.

MINIMUM AND MAXIMUM SALARY REQUIREMENTS

All employees who make less than the minimum are entitled to overtime pay even if they perform exempt duties. Therefore, the most efficient approach to analyzing whether or not an employee is exempt is to first ask whether they meet the minimum salary requirement. If they don't, there is no need to determine if they meet the exempt duties test.

However, there are some areas that should be reviewed as they could cause the employer some problems.

Minimum Salary:

Employers may pay an employee either \$455 per week, \$910 biweekly or \$1971.66 on a monthly basis, but an employer may NOT pay an exempt employee more than once a week.

The minimum of \$455 cannot include commissions, bonuses or any overtime pay. It also cannot include board, lodging, and other facilities such as:

- Meals furnished by restaurants to their employees
- Merchandise furnished to employees by the retail establishments where the work; dormitory rooms and tuition furnished by a college to student employees; and
- Transportation furnished to employees for ordinary commuting between their homes and work.

Highly Compensated Employees:

To be classified as exempt under the new rule, an employee must

- 1) Perform office or non-manual work;
- 2) Customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee;
- 3) Be paid a minimum salary of at least \$455 per week on a salary or fee basis; and
- 4) Be guaranteed a total annual compensation of at least \$100,000 exclusive of board, lodging, or other facilities, or payments for health or life insurance, contributions to retirement plans, or other fringe benefits.

Exempt Duties:

Employees who meet the minimum salary and total annual compensation requirements can only be classified as exempt if they

- 1) Perform office or non-manual work; and
- 2) Customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee.

Employees don't have to meet any of the standard exempt or primary duties tests to qualify for the new exemption.

Additional Considerations:

- * This exemption does not apply to employees who perform blue-collar or manual labor- no matter how highly paid they may be.
- * Nor does the exemption cover employees who customarily and regularly perform exempt duties under the exemption of computer professionals.

Minimum Salary versus Total Annual Compensation:

The \$455 must be guaranteed BEFORE adding on the sales commissions, or a shared percentage of the company profits. But when calculating the total annual compensation, those items can be included to determine if the employee makes \$100,000 annually.

For employees who receive extra payments such as commissions and non-discretionary bonuses, it is okay to treat them as exempt based on your estimate that they will reach \$100,000 by the end of the year. But what if they don't? The regulations provide a solution:

- Employers could make up the difference as to what the employee actually made and the \$100,000. This amount should be paid the next pay period after the end of the year. (employer can define a year as any 52 week period, such as the calendar year, fiscal year or anniversary of hire)

Employee Audit Checklist

EMPLOYEE NAME: _____

JOB TITLE: _____

EXISTING EXEMPT STATUS: _____

DATE OF REVIEW: _____

NEW EXEMPT STATUS: _____

Minimum Salary Requirement:

Is the employee paid a salary of not less than \$455 per week exclusive of board, lodging, and other facilities?

If YES, then determine whether employee is an exempt executive, administrative, professional, computer professional or highly compensated employee (see following pages of those checklists)

If NO, does employee meet one of the following alternative salary requirements?

Computer Professionals- Is he/she a computer employee being paid at least \$27.63 per hour on an hourly basis?

If YES, then you need to analyze whether he/she meets the exempt duties test for a computer professional.

If NO, then go to the next section of "Academic Administrative Employees"

Academic Administrative Employees- Is he/she an administrative employee in an educational establishment making at least the entrance salary for teachers in that establishment?

If YES, then you need to analyze whether he/she meets the exempt duties test for an academic administrative employee.

If NO, then go to the next section of "No Minimum Salary."

No Minimum Salary- Is he/she a doctor, lawyer, teacher or outside sales employee?

If YES, then you need to analyze whether he/she meets the exempt duties test for a doctor, lawyer, teacher, or outside sales employee.

If NO, does he/she own at least 20% equity interest in the enterprise in which he/she is employed, and is he/she actively engaged in the enterprise's management?

If YES, then he/she is an exempt executive employee

If NO, then he/she isn't an exempt employee and must be paid overtime.

Executive Employees:

Is this employee an exempt executive employee?

Management- Is his/her primary duty managing the enterprise or a customarily recognized department or subdivision thereof?

- If YES, then go to the next section, "oversight"
- If NO, then he/she isn't an exempt executive, but you may need to analyze whether he/she falls under one of the other white-collar exemptions.

Oversight- Does he/she customarily and regularly direct the work of 2 or more full-time employees or their equivalent?

- If YES, then go to the next section, "authority"
- If NO, then he/she isn't an exempt executive, but you may need to analyze whether he/she falls under one of the other white-collar exemptions.

Authority- Does he/she have the authority to hire or fire other employees?

- If YES, then he/she is an exempt employee
- If NO, is particular weight given to his/her recommendations about the change of status of other employees?
 - IF YES, then he/she is an exempt employee
 - IF NO, then he/she isn't an exempt executive employee, but you may need to analyze whether he/she falls under one of the other white-collar exemptions

Administrative Employees:

Is this employee an exempt administrative employee?

Management or Business Operations- Is his/her primary duty the performance of office or non-manual work that's directly related to the management or general business operations of the company or its customers?

- If YES, then go to the next section, "exercise discretion and independent judgment"
- If NO, then he/she isn't exempt under the general administrative exemption, but you may need to analyze whether he/she meets the exemption for academic administrative employees or one of the other white-collar exemptions.

Exercise of Discretion and Independent Judgment- Do his/her primary duties include the exercise of discretion and independent judgment with respect to matters of significance?

- If YES, then he/she is an exempt administrative employee.
- If NO, then he/she isn't exempt under the general administrative exemption, but you may need to analyze whether he/she meets the exemption for academic administrative employees or one of the other white-collar exemptions

Academic Administrative Employees- Is he/she employed in an educational establishment or department or subdivision thereof?

- If YES, then is his/her primary duty the performance of administrative functions that are directly related to academic instruction or training?
 - If YES, then he/she is an exempt academic administrative employee.
 - If NO, then he/she is not an exempt administrative employee, but you may need to analyze whether he/she falls under one of the other white-collar exemptions.
- If NO, then he/she is not an exempt academic administrative employee, but you may need to analyze whether he/she falls under one of the other white-collar exemptions.

Professional Employees:

Is this employee an exempt professional employee?

Advanced Knowledge- Does he/she have a primary duty of performing office or non-manual work that requires advanced knowledge in a field of science or learning?

- If YES, then he/she is an exempt learned professional.
- If NO, then go to the next section, "creative professionals"

Creative Professional- Does he/she have a primary duty of performing office or non-manual work that requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor?

- If YES, then he/she is an exempt creative professional.
- If NO, then go to the next section, "teachers"

Teachers- Is his/her primary duty teaching, tutoring, instructing, or lecturing in the activity or imparting knowledge?

- If YES, does he/she perform these duties in an educational establishment where he/she is employed?
 - If YES, then he/she is an exempt teacher.
 - If NO, then he/she isn't an exempt professional, but you may need to analyze whether he/she falls under one of the other white-collar exemptions.
- If NO, then go to the next section, "Doctors and lawyers"

Doctors and Lawyers- Does he/she hold a valid license or certificate permitting him/her to practice law or medicine and actually practice law or medicine?

- If YES, then he/she is an exempt professional.
- If NO, then does he/she have a degree in medicine and participate in a medical internship or resident program?
 - If YES, then he/she is an exempt professional.
 - If NO, then he/she is not an exempt professional, but you may need to analyze whether he/she falls under one of the other white-collar exemptions.

Computer Employees:

Is this employee an exempt computer employee?

Computer Employee- Is he/she a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field?

- If YES, then go to the next section, "exempt duties"
- If NO, then he/she isn't an exempt computer professional, but you may need to analyze whether he/she falls under one of the other white-collar exemptions.

Exempt Duties- Does he/she perform any of the following exempt duties of a computer professional?

- If YES, then he/she is an exempt computer professional
- If NO, then.....

Does his/her primary duty consist of 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, then he/she is an exempt computer professional.
- If NO, then.....

Does his/her primary duty consist of the design, documentation, testing, creating or modification of computer programs related to machine operating systems?

- If YES, then he/she is an exempt computer professional.
- If NO, then.....

Does his/her primary duties consist of a combination of the above, the performance of which requires the same level of skills?

- If YES, then he/she is an exempt computer professional.
- If NO, then he/she isn't an exempt computer professional, but you may need to analyze whether he/she falls under one of the other white-collar exemptions.

Outside Sales Employees:

Is this employee an exempt outside sales employee?

Primary Duty of Sales- Is his/her primary duty making sales or obtaining orders or contracts for services or for the use of facilities?

- If YES, then go to the next section, "outside sales"
- If NO, then he/she isn't an exempt outside sales employee

Outside Sales- Is he/she customarily and regularly engaged away from your place of business in performing his/her primary duty?

- If YES, then he/she is an exempt outside sales employee
- If NO, then he/she isn't an exempt outside sales employee

Highly Compensated Employees:

Is the employee an exempt highly compensated employee?

Maximum Salary- Is he/she guaranteed \$100,000 in total annual compensation, excluding board, lodging, or other facilities but including other compensation such as commissions and nondiscretionary bonuses?

- If YES, then go to the next section, "work required"
- If NO, then he/she isn't exempt as a highly compensated employee

Work Required- Does his/her primary duty include performing office or non-manual work?

- If YES, then go to the next section, "exempt duties"
- If NO, then he/she isn't exempt as a highly compensated employee

Exempt Duties- Does he/she customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee?

- If YES, then he/she is an exempt highly compensated employee
- If NO, then he/she isn't exempt as a highly compensated employee