

# The Fair Labor Standards Act (FLSA) and Higher Education

## Exemption Tests

### 1. Executive Exemption

(See also [https://www.dol.gov/whd/overtime/fs17b\\_executive.pdf](https://www.dol.gov/whd/overtime/fs17b_executive.pdf))

- Must satisfy the salary requirement AND primary duty is *management of a recognized part of the university* AND customarily and regularly directs the work of two or more full-time equivalent employees AND has meaningful input into hiring, firing, advancement, promotion, or other changes in status of subordinate employees.
  - i. Examples May Include – Chief Business Affairs Officer, Chief HR Officer, Chief Campus Risk Management, Chief Purchasing Officer, Chief Budget Officer, Deans, Chief Campus Security Administrator etc.

### 2. Administrative Exemption: Exempt Administrators Over Non-Academic Areas

(See also [https://www.dol.gov/whd/overtime/fs17c\\_administrative.pdf](https://www.dol.gov/whd/overtime/fs17c_administrative.pdf))

- Must satisfy the salary requirement AND primary duty must be office or non-manual work that requires discretion or independent judgement with respect to significant matters; General business of the operation means the cost centers of a company such as the functional work in areas of tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations, computer network, internet and database administration, legal and regulatory compliance.
  - i. Examples of functional work areas include tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations, computer network, internet and database administration, legal and regulatory compliance, facilities management and fundraising; insurance claims adjuster, analyst in the financial industry, HR managers, labor relations managers, credit managers, traffic managers, management consultants, purchasing agents, chief of staff. (Note: Only those with discretion or independent judgment with respect to significant matters would qualify for the exemption.)
  - ii. Misclassifications May Include: executive assistants, insurance adjusters, mortgage loan officers, copy editors, loss prevention managers & employees, security brokers.

### 3. Academic Administrative Exemption

(See also [https://www.dol.gov/whd/overtime/fs17c\\_administrative.pdf](https://www.dol.gov/whd/overtime/fs17c_administrative.pdf))

- Must satisfy the salary requirement *or* the minimum salary for teachers at the institution AND the employee's "primary" duty must consist of "administrative functions **directly related to academic instruction or training**;" Includes administrative personnel who help run higher education institutions and interact with students outside the classroom.
  - i. Examples May Include: department heads, academic counselors, academic advisors, intervention specialists, including academic counselors who administer school testing programs, assist with academic problems, and advising students regarding degree requirements.

#### 4. Learned Professional Exemption

(See also [https://www.dol.gov/whd/overtime/fs17d\\_professional.pdf](https://www.dol.gov/whd/overtime/fs17d_professional.pdf))

- Must satisfy the salary requirement AND have a primary duty of performing work that requires either (1) advanced knowledge in a field of science or learning OR (2) invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. Unless the individual is a teacher or practicing law or medicine, a professional employee must satisfy the salary basis and salary level tests as well as the duties test to be an exempt professional.
  - i. Examples May Include: teachers, researchers, certified public accountants, attorneys, certified athletic trainers, librarians, and psychologists depending on the employee's specific job duties and education, registered nurses, certified medical technologist, dental hygienist, physician assistants, chef who have attended specialized academic degrees in culinary arts programs, funeral director, theology, actuarial computation, engineering, architecture,
  - ii. Misclassifications May Include: licensed practical nurses, bookkeepers, paralegals and legal assistants.

#### 5. Creative Professional Exemption

(See also [https://www.dol.gov/whd/overtime/fs17d\\_professional.pdf](https://www.dol.gov/whd/overtime/fs17d_professional.pdf))

- Performance of work requiring invention, imagination, originality or talent in a recognized field of artistic creative endeavor (music, artist, theater, writers, graphic arts, sculptors).

#### 6. Computer Employee Exemption

(See also [https://www.dol.gov/whd/overtime/fs17e\\_computer.pdf](https://www.dol.gov/whd/overtime/fs17e_computer.pdf))

- Must be compensated either on a salary or fee basis at a rate not less than \$913 per week or if compensated on an hourly basis, at a rate not less than \$27.63 an hour. Primary duty must consist of: 1)The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; 2)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; 3)A combination of the aforementioned duties, the performance of which requires the same level of skills.
- The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled, computer related occupations as identified in the primary duties test described above, are also not exempt under the computer employee exemption.
  - i. Examples May Include: systems analyst/administrator, programmer, software engineer or other similarly skilled worker in the computer field performing the duties described above.

#### 7. Highly Compensated Employees

- Regularly performs at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption and paid total annual compensation of \$134,004 or more.

Sources: CUPA-HR, Department of Labor Wage and Hour Division  
See also: <https://www.dol.gov/whd/overtime/regulations.pdf>