

Fair Labor Standards Act (FLSA) Overtime Regulations

Checklist #2 - SALARY AND DUTIES TESTS FOR ADMINISTRATIVE EXEMPTION FROM OVERTIME

Effective August 23, 2004

If questions A, B, and C, or questions A and D, are all answered “yes,” the employee meets the administrative exemption test.

- A. Is the employee paid a salary of at least \$455 per week, or the entry level salary for a professional instructor in the case of academic administrative personnel?

Yes _____ No _____

Note: The same criteria for “salary” discussed under the executive exemption, apply to the business administrative exemption.

- B. Does the employee’s primary duty consist of the performance of office or non-manual work directly related to management policies or general business operations (i.e., administrative work) of the employer or its customers, as opposed to work primarily involving production or sales of goods or services?

Yes _____ No _____

1. In order to identify “administrative” versus “production” work, you must first identify the product(s) or service(s) provided by the employer. In other words, identify the primary business activities of the employer (How does the employer generate revenue?)
2. After identifying the company’s product(s) or service(s), determine whether the employee’s work primarily involves “producing” the product or “delivering” the service.
3. The administrative operations of the business include advising management, planning, negotiating, representing the company, purchasing, promoting sales, and business research and control.
4. These activities frequently include tax, finance, accounting, audit, insurance, quality control, purchasing, advertising, marketing, research, safety and health, personnel management, employee benefits, labor relations, public relations, and government relations.
5. Administrative duties do not include routine or structured tasks such as bookkeeping, data tabulation, or clerical duties.

6. The administrative work must be of substantial importance to the management or operation of the business, such as work affecting the development of policies or responsibilities to execute or carry out policy.
7. To qualify as a primary duty, the employee's principal or most important duty must involve performing the high-level administrative functions.
8. When an employee spends less than the majority of his/her time performing high level administrative functions, the employee may still qualify under the administrative exemption if:
 - a. the relative importance of the high-level administrative duties is greater than the other types of duties;
 - b. the employee frequently exercises discretionary powers;
 - c. the employee is relatively free from supervision; and
 - d. the employee's salary is distinguishable from the wages paid to other employees who perform the same kind of non-exempt work.

C Do the employee's duties include work requiring the exercise of discretion and judgment?

Yes _____ No _____

1. The employee must exercise discretion and independent judgment with respect to matters of significance as opposed to daily routine decisions.
2. Independent judgment and discretion involves the comparison and evaluation of possible courses of conduct and having the authority to make an independent choice, free from immediate direction with respect to matters of significance. It also does not include the use of manuals, guidelines or software packages to make determinations.
3. The exercise of independent judgment and discretion does not include the use of skill in applying techniques, procedures, or specific standards.
4. Discretion and independent judgment may be:
 - a. making a decision to depart from prescribed standards or permitted tolerances;
 - b. making decisions that affect the operational policies of the employee's department;
 - c. formulating recommendations to a customer for the purchase of securities;

- d. making decisions in connection with negotiations where the individual is given “reasonable latitude” in carrying on those discussions, which are binding on the employer;
 - e. formulating recommendations, even if management personnel must review and accept the recommendation prior to implementation;
 - f. formulating or participating in the formulation of policy for the business unit; or
 - g. broad authority to commit the employer in substantial respects financially.
5. Discretion and independent judgment is not:
- a. applying knowledge, following prescribed procedures or determining which procedures to follow;
 - b. determining whether specified standards have been satisfied, even if there is some leeway in reaching a conclusion;
 - c. performing inspection functions by following established techniques and procedures with skills acquired through special training or experience;
 - d. formulating recommendations based upon the development of facts concerning conformity with a known standard;
 - e. comparing items based upon established standards, known through experience or written manuals;
 - f. screening applicants or conducting interviews to determine satisfaction of certain minimum qualifications;
 - g. making decisions that do not commit the employer in substantial respects financially or otherwise; or
 - h. negotiating settlements with policy holders where the individual is not given “reasonable latitude” in carrying on those negotiations.

D. Does the employee’s primary duty consist of the performance of office or non-manual work, directly related to academic instruction or training in an educational institution?

Yes _____ No _____

- 1. An educational institution includes an elementary or secondary school system, an institution of higher education, and special schools for mentally or physically disabled or gifted children, with no distinction between public and private organizations.

2. Academic administrative activities mean work directly related to the academic operations and academic functions of the institution, such as administration of curriculum, examination of quality and methods of instruction, measurement of learning potential and achievement, maintenance of academic and grading standards, and other aspects of a teaching program.
3. Academic administrative responsibilities do not include building management and maintenance, supporting the health of students, or activity performed by social workers, psychologists, or even dieticians.