

Fair Labor Standards Act (FLSA)

Exemption Test

Incumbent's Current Job Title¹:		Grade:
Incumbent's Name:		
Cabinet Officer Area:		
Department:		
Supervisor's Name:		
Supervisor's Title:		
Date Completed:		
Completed by:		

Please note that an employee must meet the "salary basis" test to be exempt under the FLSA. If the person in the position earns less than the minimum required salary (\$600 per week), the position is considered non-exempt and is subject to the overtime provisions of the FLSA.²

Instructions:

1. Read the criteria for each exemption category (executive, administrative, computer, learned professional, or creative professional).
2. Place an "x" in each box that applies to this position. You may check boxes in more than one exemption category. Give specific and detailed answers to the questions asked.
3. After checking the relevant boxes and providing detailed answers, please go to the last page and make a recommendation in the exempt or non-exempt box. Add any final comments or supporting remarks in the space reserved for additional comments.
4. Please submit the completed form as an email attachment to Human Resources.

For HR use only	
Relevant exemption test:	
Exempt status determination:	exempt non-exempt
Date finalized:	

FLSA STATUS DETERMINATION *

	Yes	No	Comments
Is this position EXEMPT from the overtime provisions of the FLSA?			

* Please attach the position description.

HR REP. SIGNATURE: _____ **DATE:** _____

Executive Employee Exemption

Exempt executive employees generally are responsible for the success or failure of business operations under their management. Other critical elements are (1) whether management is the employee's primary duty, (2) whether the employee directs the work of two or more full-time equivalent employees, and (3) whether the employee has the authority to hire/fire other employees or, alternatively, whether the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees are given particular weight³.

	YES	NO
1. Is the employee compensated on a <u>salary basis</u>⁴ at a rate not less than \$600 per week?		If no, stop. The employee is not exempt.
2. Does the employee's "primary duty" consist of managing the enterprise or a customarily recognized department or division thereof? If yes, please describe:		If no, the employee is not exempt under this test.
3. Does the incumbent regularly and customarily supervise two or more employees who are employed in the department or subdivision that the employee manages?		
Interview, select, and train employees? Coach employees in proper job performance techniques and procedures?		
Direct the work of employees and set/adjust their rates of pay and hours of work?		
Maintain records on employee productivity for use in supervision or control?		
Appraise employees' productivity and efficiency to recommend promotions or other changes in status?		
Handle employee complaints and grievances and discipline employees when necessary?		
Plan other employees' work and determine the techniques used in their work?		
Apportion work among different employees?		
Determine the types of materials, supplies, or tools to be used by other employees? Control the flow and distribution of materials and supplies?		
Provide for the safety of employees and the property of the employer?		
Control the budget? If yes, please explain:		
Monitor or implement legal compliance measures?		
3. Does the incumbent have shared responsibility for the supervision of the same employees in the same department? If yes, please describe:		
4. Does the incumbent have the authority to hire or fire other employees?		
If no, is it part of the incumbent's job to make recommendations on hiring, firing, advancement, promotion, or other change of status?		
Are the incumbent's recommendations frequently relied upon?		
4. What percent of working time does the incumbent spend providing the leadership duties and responsibilities described	_____ %	

above?

5. List the employees whose work is customarily and regularly directed by the incumbent.

Last Name

Title

Weekly work hours

Administrative Employee Exemption

The duties portion of the administrative exemption test establishes a two-part inquiry for determining whether an employee performs exempt administrative duties. First, what *type* of work is performed by the employee? Is the primary duty the performance of work directly related to management or general business operations? Second, what is the *level* or *nature* of the work performed? Does the employee's primary duty include the exercise of discretion and independent judgment with respect to matters of significance? All of the relevant factors must be considered when determining whether an employee in an administrative position is exempt.

	YES	NO
2. Is the employee compensated on a <u>salary basis</u> at a rate not less than \$600 per week?		If no, stop. The employee is not exempt.
3. Please describe the incumbent's "primary duty"⁵:		
Is this primary duty directly related to the management or general business operations of the university or its customers? ⁶		If no, the employee is not exempt under this test.
3. Does the incumbent's <u>primary duty</u> require the exercise of discretion and <u>independent judgment</u>⁷ with respect to matters of significance? ⁸ If yes, does the employee:		If no, the employee is not exempt under this test.
Have the authority to formulate, affect, interpret, or implement management policies or operating practices? If yes, please provide an example:		
Carry out major assignments in conducting the operations of the university?		
Perform work that affects business operations to a substantial degree?		
Have the authority to commit the university in matters that have significant financial impact? If yes, please provide an example:		
Have authority to waive or deviate from established policies and procedures without prior approval? If yes, please provide an example:		
Provide consultation or expert advice to management?		
Have authority to negotiate and bind the university on significant matters? If yes, please provide an example:		
Have involvement in planning long or short-term business objectives?		
Investigate and resolve matter of significance on behalf of management? If yes, please provide an example:		
Represent the university in handling complaints, arbitrating disputes or resolving grievances? If yes, please provide an example:		

Computer Employee Exemption

An employee who meets the consolidated duties test for computer professionals will be exempt if he or she meets either the salary or fee basis test or is paid at least \$41.00 hourly. To qualify as an exempt computer employee, a worker must have a primary duty that consists of the four duties described under #3 below. The primary duty requirement applies both to salaried and hourly computer employees.

	YES	NO
1. Is the employee compensated on either a salary or fee basis at a rate not less than \$600 per week, or if compensated on an hourly basis, at a rate not less than \$41.00 per hour?		If no, stop. The employee is not exempt.
2. Is the incumbent employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field? ^a If yes, please describe the incumbent's <u>primary duty</u> (see end note):		If no, stop. The employee is not exempt under this test.
3. Does the incumbent's primary duty consist of:		
a) The application of systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional specifications? If yes, please give an example:		
b) 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, please give an example:		
c) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems? If yes, please give an example:		
d) A combination of the aforementioned duties, the performance of which requires the same level of skills? If yes, please give an example:		

Professional Employee Exemption

The professional exemption actually encompasses two exemptions – one for “learned professionals” and one for “creative professionals.” To be an exempt “learned professional” an employee must have a primary duty that is the performance of work requiring knowledge of an advanced type – including the consistent exercise of discretion and judgment – in a field of science or learning where the advanced knowledge is acquired by a prolonged course of specialized intellectual instruction (examples include lawyers, doctors, architects, teachers, etc.). To meet the test for the creative professional exemption, an employee must have a primary duty that involves the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor (examples include actors, musicians, novelists, etc.).

Learned Professional Employee

	YES	NO
1. Is the employee compensated on either a <u>salary or fee basis</u> at a rate not less than \$600 per week?		If no, stop. The employee is not exempt.
2. Please describe the incumbent’s “primary duty”:		
3. Does the incumbent’s primary duty involve the performance of work requiring advanced knowledge ¹⁰ in a field of science or learning that is customarily acquired by a prolonged course of specialized intellectual instruction ^{11 12} ?		
4. Is the incumbent’s primary duty predominantly intellectual in character? If yes, please describe:		
5. Does the incumbent’s primary duty require that his or her advanced knowledge be used to analyze, interpret, or make deductions from varying facts or circumstances? If yes, please give an example:		
6. Does the incumbent’s primary duty include the <u>consistent</u> exercise of discretion and judgment?		

Creative Professional Employee

	YES	NO
1. Is the employee compensated on either <u>salary or fee basis</u> at a rate not less than \$600 per week?		If no, stop. The employee is not exempt.
2. Please describe the incumbent’s “primary duty”:		
3. Does the incumbent’s primary duty involve the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor ¹³ ?		

End Notes

¹A **job title** alone is insufficient to establish the exempt status of an employee. Rather, the exempt or non-exempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations. It cannot be assumed that merely because one employee in a particular job classification is exempt, a second employee with a similar job title or even some of the same duties also is exempt. The decision must be made on a case-by-case basis.

² The \$600 **minimum salary threshold** for exempt workers is an absolute requirement, no matter whether the employee is full-time or part-time. Prorating the minimum salary figure (\$600 per week) is not permitted for part-time employees or in job-sharing situations. In other words, a half-time employee who earns \$400/week does not meet the salary basis test, even though the employee would earn \$800/week were s/he to work full-time.

³ To determine whether an employee's suggestions and recommendations are given "**particular weight**," factors to be considered include, but are not limited to, whether it is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon.

⁴ "**Salary basis**" means that the employee receives a pre-determined amount of compensation each pay period on a non-fluctuating basis. This predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work.

⁵ "**Primary duty**" means the principal, main, major, or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of non-exempt work performed by the employee.

⁶ "**Directly related to management or general business operations**" refers to the type of work performed by the employee. In order to support the administrative exemption, the work must be related directly to the running or servicing of the university, as distinguished, for example, from working on a production line, selling in a retail establishment, etc. Types of work considered "directly related" include finance, purchasing, marketing, research, compliance, safety and health, human resources, etc.

⁷ The **exercise of discretion and judgment** involves the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term must be applied in the light of all the facts involved in the employee's particular employment situation, and implies that the employee has authority to make an independent choice, free from immediate direction or supervision. The fact that an employee's decisions may be revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. In addition, exempt employees may use manuals, guidelines or other established procedures if they contain highly technical, scientific, legal, financial or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills.

Discretion and independent judgment **does not include** following prescribed procedures or determining which procedures to follow, determining whether specified standards have been satisfied (even if there is some leeway), or applying established techniques or standards described in manuals or other sources to determine the correct response to an inquiry or set of circumstances. It also does not include clerical or secretarial work, recording or tabulating data, or performing mechanical, repetitive, recurrent or routine work. For example, an employee who enters, compiles, records, maintains, or tabulates data is not exempt as an administrative employee, even if they are called a "statistician".

⁸ The term "**matters of significance**" refers to the level of importance or consequence of the work performed. An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance may cause serious financial loss.

⁹ The **computer 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 exempt work are not exempt under the computer employee exemption (they may, however, be exempt under another category).

¹⁰ **Learned professional work** is distinguished from work involving routine mental, manual, mechanical or physical work. A learned professional employee uses advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level. An employee cannot be exempt as a learned professional unless the work requires knowledge of an advanced type. For example, it is not uncommon for someone trained as a lawyer to work as a paralegal while waiting to pass the bar exam. In such a case, the employee would not qualify for the exemption.

When an employee spends less than the majority of his/her time pursuing the profession, the learned professional exemption may still be met, depending on the relative importance of the professional duties as opposed to the other types of duties, the frequency with which the employee exercises discretionary powers, the employee's relative freedom from supervision and the relationship between the employee's salary and the wages paid to other employees who perform the same kind of non-exempt work.

¹¹ **Fields of science or learning** include law, medicine, theology, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other occupations that have a recognized professional status and are distinguishable from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type, but is not in a field of science or learning.

¹² The learned professional exemption is restricted to professions where **specialized academic training is a standard prerequisite** for entrance into the profession (e.g., an Engineering degree is required to be a Facilities Construction Engineer). However, the word "customarily" means the exemption may be available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction.

The learned professional exemption **does not apply** to occupations in which employees acquire their skill by experience rather than by advanced specialized intellectual instruction. The learned professional exemption is not available for occupations that may be performed with only the general knowledge acquired by an academic degree in any field, knowledge acquired through an apprenticeship, or training in the performance of routine mental, manual, mechanical or physical processes. The exemption also does not apply to occupations in which employees acquire skill by experience.

¹³ For the **creative professional** exemption, work performed must be "in a recognized field of artistic or creative endeavor" including such fields as music, writing, acting, graphic design, etc. The creative professional exemption generally is not met by a person employed as a copyist, graphic arts technician, animator, or retoucher of photographs since such work is not properly described as creative in character.