



FEDERAL OVERTIME | COMMON EXEMPTIONS CHECKLIST¹

Consideration 1 – COMPENSATION METHOD

The employee is paid by either of the following methods:

- A predetermined amount of pay (on a weekly or less frequent basis) of at least \$684 a week, constituting all or part of the employee's compensation, which is not subject to reduction because of variations in the quality or quantity of work (**Salary Basis**).
- An agreed amount for completing a discrete job, regardless of how long it takes the employee to complete that work if, based on the hours actually required to complete the work, the fee paid would equal at least \$684 a week if the employee worked 40 hours at that rate² (**Fee Basis**).

- If either box is checked, move on to Consideration 2.
- If neither of the boxes is checked, move on to Consideration 6.

Consideration 2 – EXECUTIVE EXEMPTION

- Executive Exemption.* The employee's primary duty involves managing the enterprise or a customarily recognized department or subdivision of the employer; **AND** the employee regularly directs the work of two or more full-time employees, or the equivalent (for example, one full-time and two half-time employees); **AND** the employee has the authority to hire or fire or the employee's recommendations regarding employee status changes (for example, hiring, firing, promotion, and demotion) are given particular weight.
- Business Owner Exemption.* The employee: (1) owns at least a 20% equity interest in the employer; **AND** (2) is actively engaged in the management of the employer.

- If either box is checked, the employee may qualify for the executive exemption.
- If neither of the boxes is checked, move on to Consideration 3.

Consideration 3 – ADMINISTRATIVE EXEMPTION

- Administrative Exemption.* The employee's primary duty is office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers (which is work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment); **AND** the employee's primary duty involves the regular exercise of discretion and independent judgment³ with respect to matters of significance.
- Educational Administrative Exemption.* The employee's primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment; **AND** the employee is compensated on a salary basis, which is at least equal to the entrance salary for teachers in the same educational establishment.

- If either box is checked, the employee may qualify for the administrative exemption.
- If neither of the boxes is checked, move on to Consideration 4.

¹ This checklist includes many common exemptions to overtime, however, there may be others that apply to your business. Be sure to consult with an attorney for additional information.

² For example, an artist paid \$350 for a picture that took 20 hours to complete meets the minimum salary requirement since the rate would yield \$700 if 40 hours were worked.

³ In general, the exercise of **discretion and independent judgment** involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term implies that the employee has authority to make an independent choice, free from immediate direction or supervision and must involve more than the use of skill in applying well-established techniques, procedures, or specific standards described in manuals or other sources.

Consideration 4 – PROFESSIONAL EXEMPTION

- Learned Professional Exemption.* The employee’s primary duty involves the performance of work requiring advanced knowledge (meaning work that is predominantly intellectual); **AND** the advanced knowledge is in a field of science or learning (such as law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical, and biological sciences, and pharmacy); **AND** the advanced knowledge is customarily acquired by a prolonged course of specialized intellectual instruction (this exemption is restricted to professions where specialized academic training is a standard prerequisite for entrance into the profession).
- Creative Professional Exemption.* The employee’s primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor (including music, writing, acting, and the graphic arts; the requirements of this exemption are generally met by actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, and novelists).

If either box is checked, the employee may qualify for the professional exemption.

If neither of the boxes is checked, move on to Consideration 5.

Consideration 5 – HIGHLY COMPENSATED EMPLOYEE EXEMPTION

- The employee performs office or non-manual work; **AND** the employee is paid total annual compensation of \$107,432 or more (which must include at least \$684 per week paid on a Salary Basis or Fee Basis); **AND** the employee customarily and regularly performs at least one of the duties of an exempt executive, administrative, or professional employee.

If the box is checked, the employee may qualify for the highly compensated employee exemption.

If the box is not checked, move on to Consideration 6.

Consideration 6 – COMPUTER PROFESSIONAL EXEMPTION

- The employee is compensated on a Salary Basis or Fee Basis (at a rate of at least \$684/week) or on an hourly basis (at a rate not less than \$27.63/hour); **AND** the employee is employed as a computer systems analyst, a computer programmer, a software engineer, or another similarly skilled worker in the computer field; **AND** the employee’s primary job duty involves applying systems analysis techniques and procedures (including consulting with users to determine hardware, software, or system functional specifications); or the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs (including prototypes, based on user or system design specifications); or the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or a combination of these specified duties requiring the same level of skill.

If the box is checked, the employee may qualify for the computer professional exemption.

If the box is not checked, move on to Consideration 7.

Consideration 7 – OTHER EXEMPTIONS

- Outside sales.* The employee’s primary duty is making sales or obtaining orders or contracts for services or the use of facilities (including the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, the solicitation of freight for railroads and other transportation agencies, and the selling or taking of orders for a service, which may be performed by someone other than the person taking the order) that the client or customer is paying for; **AND** the employee is customarily and regularly engaged away from the employer’s place of business (such as at the customer’s business or home) when performing their primary duty.

- Teachers.* The employee’s primary duty is teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge; **AND** the employee is employed and engaged in this activity as a teacher in an educational establishment (this exemption includes regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers).

- Practice of Law or Medicine.* An employee holding a valid license or certificate permitting the practice of law or medicine if the employee is actually engaged in such a practice; or the employee holds the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program for the profession.

If any box is checked, the employee may qualify for the indicated exemption from federal overtime.

If none of the boxes are checked, the employee likely does not qualify for an exemption from the overtime requirements of the FLSA.