

RULES FOR “WHITE COLLAR” OVERTIME EXEMPTIONS

The U.S. Department of Labor regulations define who is exempt from overtime under the “white collar” exemptions to the Fair Labor Standards Act, the federal wage and hour law.

Exempt Employees

Employees earning less than \$455 per week (\$23,660 annually) normally will be entitled to overtime. Employees earning at least \$455 per week may be exempt from overtime if they qualify for an exemption.

To qualify for the [executive exemption](#), an employee must:

- Be paid on a salary basis at the rate of at least \$455 per week;
- Have a primary duty of managing the enterprise or a customarily recognized department or subdivision of the enterprise;
- Customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- Have the authority to hire or fire other employees, or their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

The regulations also contain a “concurrent duties” test that makes an employee exempt if their primary duty is to manage the enterprise or a customarily recognized department or subdivision of the enterprise while they perform non-exempt work, such as managers and assistant managers at establishments with many small locations like retail businesses and banks.

To qualify for the [administrative exemption](#), an employee must:

- Be paid on a salary or fee basis of at least \$455 per week;
- Have a primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer’s

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customers; and

- Exercise discretion and independent judgment on matters of significance as part of their primary duty.

Examples about what duties are exempt clarify whether a variety of jobs qualify for the administrative exemption, including insurance adjusters, financial services industry employees, team leaders working on major projects, executive assistants, human resources managers, purchasing agents, public and private sector inspectors, graders, and comparison shoppers.

To qualify for the [professional exemption](#), an employee must:

- be paid on a salary or fee basis of at least \$455 per week, and either:
 - Have a primary duty of performing work: a) requiring advanced knowledge in a field of science or learning that is customarily acquired by a prolonged course of specialized intellectual instruction, and b) that is predominantly intellectual in character and includes work requiring the consistent exercise of discretion and judgment; or
 - Have a primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

This exemption extends to employees in the “learned professions” (medicine, law, science, or other similar fields) who have the requisite knowledge and perform substantially the same work, but obtained their advanced knowledge through a combination of instruction and experience.

To qualify for the [computer employee exemption](#) an employee must:

- Be paid on a salary or fee basis of at least \$455 per week, or at least \$27.63 an hour; and
- Be employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field whose primary duty consists 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. The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
 4. Performing a combination of these duties that requires the same skill level.

The computer employee exemption is unavailable for employees who manufacture or repair computers, and employees who use computers or software to perform their jobs but who are not primarily engaged in the above activities.

The [highly-compensated employee exemption](#) applies to employees who earn at least \$100,000 annually. These employees will be exempt if they:

- Are paid a salary basis of at least \$455 per week;
- Have a primary duty that includes performing office or non-manual work; and
- Customarily and regularly perform at least one of the exempt duties or responsibilities in the executive, administrative or professional exemptions.

The regulations define the [outside sales exemption](#), to require that an employee must:

- Have a primary duty of making sales, or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- Customarily and regularly be engaged away from the employer's place or places of business.

More sales employees will qualify for the exemption because it allows a salesperson to perform nonexempt work for more than 20% of their time (the previous limit) as long as sales or obtaining orders or contracts remains their primary duty (more than 50% of their time).

Discipline Provision

An employer can lose an exemption if it makes improper deductions from an exempt employee's pay. The regulations explain the types of deductions that an employer can make from an exempt employee's pay without losing the exemption. Employers will be able to deduct:

- For full-day absences for other than sickness or disability;
- To offset amounts received as jury or witness fees, or military pay;
- As a penalty for infractions of safety rules of major significance; and
- For disciplinary suspensions lasting one or more full days based upon a violation of a workplace conduct rule.

Safe Harbor Provision

The [safe harbor](#) provision allows employers who adopt special policies and practices to continue treating an employee as exempt after making a salary deduction that could have invalidated their exempt status. The policy must be clearly communicated, prohibit improper

deductions, and contain a complaint mechanism. Employers must also reimburse employees for the improper deductions and make a good faith commitment to comply in the future.

An employee who does not qualify for these or another exemption will be entitled to be paid overtime, and an employer will be responsible for keeping accurate time records. Further, a job title will not govern whether employees are exempt. Employees who are “managers” by title will not be exempt unless they qualify for an exemption.