



**Department of Labor
Fair Labor Standards Act (FLSA)
Duties Test Questionnaire – Exempt or Non-Exempt**

Instructions:

1. Read the criteria for each exemption category.
2. Place a 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 first page and make a recommendation in the exempt or non-exempt box.

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 (\$684 per week), the position is considered non-exempt and is subject to the overtime provisions of the FLSA. The salary threshold must be based on a predetermined amount of pay constituting all or part of the employee's salary, which is not subject to reduction because of variations in the quality or quantity of work performed.

Employers may use nondiscretionary bonuses and incentive payments (including commissions) paid on an annual or more frequent basis, to satisfy up to 10 percent of the standard salary level. Additionally, if after the 52-week period, the employer has not met its financial obligation, the employer can make a final “catch-up” payment within one pay period after the end of the 52-week period to bring an employee’s compensation up to the required level. Any such catch-up payment will count only toward the prior year’s salary amount and not toward the salary amount in the year in which it is paid.

[Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions](#)

Employee’s Name and Current Job Title		
Department		
Supervisor’s Name and Title		
Date Completed		
Completed by		
Questionnaire Results		
Exempt status determination:	<input type="checkbox"/> EXEMPT	<input type="checkbox"/> NON-EXEMPT

Executive Employee Exemption

[Fact Sheet #17B: Exemption for Executive Employees Under the Fair Labor Standards Act](#)

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 weight.

	YES	NO
Is the employee compensated on a salary basis at a rate not less than \$684 per week?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Does the employee’s primary duty consist of managing the enterprise or a customarily recognized department or division thereof?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Does the employee regularly and customarily supervise two or more employees who are employed in the department or subdivision that the employee manages?	<input type="checkbox"/>	If any of the answers below are no, stop. The employee is not exempt.
Interview, select and train employees? Coach employees in proper job performance techniques and procedures?	<input type="checkbox"/>	<input type="checkbox"/>
Direct the work of employees and set/adjust their rates of pay and hours of work?	<input type="checkbox"/>	<input type="checkbox"/>
Maintain records on employee productivity for use in supervision or control?	<input type="checkbox"/>	<input type="checkbox"/>
Appraise employee’s productivity and efficiency to recommend promotions or other changes in status?	<input type="checkbox"/>	<input type="checkbox"/>
Handle employee complaints and grievances and discipline employees when necessary?	<input type="checkbox"/>	<input type="checkbox"/>
Plan other employees’ work and determine the techniques used in their work?	<input type="checkbox"/>	<input type="checkbox"/>
Apportion work among different employees?	<input type="checkbox"/>	<input type="checkbox"/>
Determine the types of materials, supplies, or tools to be used by other employees and control the flow and distribution of materials and supplies?	<input type="checkbox"/>	<input type="checkbox"/>
Provide for the safety of employees and the property of the employer?	<input type="checkbox"/>	<input type="checkbox"/>
Control the budget?	<input type="checkbox"/>	<input type="checkbox"/>
Monitor or implement legal compliance measures?	<input type="checkbox"/>	<input type="checkbox"/>

Executive Employee Exemption (continued)		
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 weight.		
	YES	NO
Does the employee have shared responsibility for the supervision of the same employees in the same department?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Does the employee have the authority to hire or fire other employees?	<input type="checkbox"/>	If any of the answers below are no, stop. The employee is not exempt.
If no, is it part of the employee’s job to make recommendations on hiring, firing, advancement, promotion or other change of status?	<input type="checkbox"/>	<input type="checkbox"/>
Are the employee’s recommendations frequently relied upon?	<input type="checkbox"/>	<input type="checkbox"/>
What percent of working time does the employee spend providing the leadership duties and responsibilities described above?	<input type="checkbox"/> Click Here if 85% or more	<input type="checkbox"/> If less than 85%, stop. The employee is not exempt.

Administrative Employee Exemption

[Fact Sheet #17C: Exemption for Administrative Employees Under the Fair Labor Standards Act](#)

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
Is the employee compensated on a salary basis at a rate not less than \$684 per week?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Does the employee's primary duty require the exercise of discretion and independent judgment with respect to matters of significance? If yes, does the employee:	<input type="checkbox"/>	If any of the answers below are no, stop. The employee is not exempt.
Is this primary duty directly related to the management or general business operations of the business or its customers?	<input type="checkbox"/>	<input type="checkbox"/>
Have the authority to formulate, affect, interpret, or implement management policies or operating practices?	<input type="checkbox"/>	<input type="checkbox"/>
Carry out major assignments in conducting the operations of the business?	<input type="checkbox"/>	<input type="checkbox"/>
Perform work that affects business operations to a substantial degree?	<input type="checkbox"/>	<input type="checkbox"/>
Have the authority to commit the business in matters that have significant financial impact?	<input type="checkbox"/>	<input type="checkbox"/>
Have authority to waive or deviate from established policies and procedures without prior approval?	<input type="checkbox"/>	<input type="checkbox"/>
Provide consultation or expert advice to management?	<input type="checkbox"/>	<input type="checkbox"/>
Have authority to negotiate and bind the business on significant matters?	<input type="checkbox"/>	<input type="checkbox"/>
Have involvement in planning long or short-term business objectives?	<input type="checkbox"/>	<input type="checkbox"/>
Investigate and resolve matters of significance on behalf of management?	<input type="checkbox"/>	<input type="checkbox"/>
Represent the business in handling complaints, arbitrating disputes or resolving grievances?	<input type="checkbox"/>	<input type="checkbox"/>

Computer Employee Exemption

[Fact Sheet #17E: Exemption for Employees in Computer-Related Occupations](#)

NOTE: Not recognized in Pennsylvania

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 \$27.63 hourly. To qualify as an exempt computer employee, a worker must have a primary duty that consists of the four duties described under the primary duties below. The primary duty requirement applies both to salaried and hourly computer employees.

	YES	NO
Is the employee compensated on a salary basis at a rate not less than \$684 per week or is the employee compensated on an hourly basis, at a rate not less than \$27.63 per hour?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Is the employee employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Does the employee’s primary duty consist of:	If any of the answers below are no, stop. The employee is not exempt.	
The application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional specifications?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
The design, documentation, testing, creation, or modification of computer programs related to machine operating systems?	<input type="checkbox"/>	<input type="checkbox"/>
A combination of the aforementioned duties, the performance of which requires the same level of skills?	<input type="checkbox"/>	<input type="checkbox"/>

Professional Employee Exemption

[Fact Sheet #17D: Exemption for Professional Employees Under the Fair Labor Standards Act](#)

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
Is the employee compensated on either a salary or fee basis at a rate not less than \$684 per week?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Does the employee’s primary duty involve the performance of work requiring advanced knowledge in a field of science or learning that is customarily acquired by a prolonged course of specialized intellectual instruction?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Is the employee’s primary duty predominantly intellectual in character?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Does the employee’s primary duty require that his or her advanced knowledge be used to analyze, interpret or make deductions from varying facts or circumstances?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Does the employee’s primary duty include the consistent exercise of discretion and judgment?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Creative Professional Employee	YES	NO
Is the employee compensated on either salary or fee basis at a rate not less than \$684 per week?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Does the employee’s primary duty involve the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor?	<input type="checkbox"/>	If no, stop. The employee is not exempt.

Highly Compensated Employees Performing Executive, Professional or Administrative Duties
[Fact Sheet #17H: Highly Compensated Employees and the Part 541](#)

NOTE: Not recognized in Pennsylvania

The duties performed for the highly compensated exemption must include performing office or non-manual work and customarily and regularly performing at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

	YES	NO
<p>Is the employee paid an annual total compensation of \$107,432 or more, which includes at least \$684 per week paid on a salary basis (effective Jan. 1, 2020)? The required total annual compensation of \$107,432 or more may consist of commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period, but does not include credit for board or lodging, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits.</p>	<input type="checkbox"/>	<p>If no, stop. The employee is not exempt.</p>
<p>Does the employee perform office or non-manual work?</p>	<input type="checkbox"/>	<p>If no, stop. The employee is not exempt.</p>
<p>Does the employee customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt executive?</p>	<input type="checkbox"/>	<p>If no, stop. The employee is not exempt.</p>

Outside Sales Exemption

[Fact Sheet #17F: Exemption for Outside Sales Employees Under the Fair Labor Standards Act](#)

The salary basis and salary requirements do NOT apply for this exemption. That is, this exemption does NOT have the salary basis requirement to regularly receive a predetermined amount of pay constituting all or part of the employee's salary, AND this exemption does NOT require payment of a minimum salary. Commission-only pay is allowable under this exemption.

	YES	NO
Does the employee's primary duty consist of making sales or obtaining orders for contracts for services or for the use of facilities for which consideration will be paid by the client or customer?	<input type="checkbox"/>	If no, stop. The employee is not exempt.
Is the employee customarily and regularly engaged away from the employer's place(s) of business?	<input type="checkbox"/>	If no, stop. The employee is not exempt.

Blue-Collar Workers

[Fact Sheet #17I: Blue-Collar Workers and the Part 541 Exemptions Under the Fair Labor Standards Act](#)

The exemptions provided by FLSA Section 13(a)(1) do not apply to manual laborers or other “blue-collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. Such nonexempt “blue-collar” employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training.

FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under Section 13(a)(1) of the FLSA nor the regulations at 29 C.F.R. Part 541, no matter how highly paid they might be.

Police Officers, Fire Fighters and Other First Responders

[Fact Sheet #17J: First Responders and the Part 541 Exemptions Under the Fair Labor Standards Act \(FLSA\)](#)

29 C.F.R. § 541.3 provides that police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees (“first responders”) who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; and other similar work are not exempt under Section 13(a)(1) or the regulations and thus are protected by the minimum wage and overtime provisions of the FLSA. First responders generally do not qualify as exempt executives because their primary duty is not management. They are not exempt administrative employees because their primary duty is not the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers. Similarly, they are not exempt learned professionals because their primary duty is not the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. Although some first responders have college degrees, a specialized academic degree is not a standard prerequisite for employment.