



## **Fair Labor Standards Act (FLSA)**

Western Human Resources determines whether a professional staff position is overtime eligible or overtime exempt based upon the nature of the position's duties, level of responsibility, and salary. All overtime exempt positions must meet at least one of the FLSA duties tests and must meet the applicable salary test.

### **Overtime Eligible**

Overtime eligible professional staff positions must be paid at time and one half for all hours worked in excess of 40 hours in a work week. The supervisor may approve compensatory time at time and one half in lieu of overtime compensation. All overtime eligible professional staff must comply with positive time reporting requirements. Please refer to the HR Policies regarding Overtime Eligible Professional Staff.

Overtime eligible professional staff will have one of the following two FLSA Exemption indicators:

- Non-Exempt due to Salary (NS)
- Non-Exempt due to Duties (ND)

Overtime eligible professional staff should not have "Exempt Indicator" box checked in NBAPOSN or NBAJOBS.

### **Overtime Exempt**

Overtime exempt professional staff do not receive overtime compensation and are not eligible for compensatory time.

To be overtime exempt under FLSA, employees must satisfy the following requirements:

- (1) Must be paid on a salary basis not subject to reduction based on quality or quantity of work ("salary basis test");
- (2) Their salary must meet a minimum salary level (\$913 per week, equivalent to \$47,476 annually) ("salary level test"); and
- (3) The employee's primary job duty must involve the kind of work associated with exempt executive, administrative or professional employees (the "standard duties test")

## FLSA EXEMPTIONS

### **Executive Exemption (EX)**

To qualify under the Executive Exemption, an employee must:

- (1) Be compensated on a salary basis at a rate of not less than \$913 per week (\$47,476 annually);
- (2) The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- (3) The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- (4) The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

### **Highly Compensated (HC)**

To qualify under the Highly Compensated Exemption, an employee must:

- (1) Be compensated on a salary basis at a rate of not less than \$134,004 annually (at least \$913 per week); and
- (2) Customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the relevant duties tests.

### **Academic Administrator Exemption (AA)**

To qualify under the Academic Administrative Exemption, an employee must:

- (1) Either must:
  - a. Receive compensation on a salary basis of not less than \$913 per week (\$47,476 a year); or
  - b. Be paid on a salary basis at least equal to the entrance salary for teachers in the same educational establishment (29 CFR 541.204)
- (2) Have a primary duty that performing administrative functions directly related to academic instruction or training in an educational establishment; and
- (3) Primary duty must include the exercise of discretion and independent judgment with respect to matters of significance

### **Administrative Exemption (AE)**

To qualify under the Administrative Exemption, an employee must:

- (1) Receive compensation on a salary basis of not less than \$913 per week (\$47,476 a year); and
- (2) Have a primary duty that is 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; and
- (3) Primary duty must include the exercise of discretion and independent judgment with respect to matters of significance

### **Learned Professional (LP)**

The Learned Professional Exemption is a Professional Exemption.

To qualify under the Learned Professional Exemption, an employee must:

- (1) Receive compensation on a salary basis of not less than \$913 per week (\$47,476 a year); and
  - a. Note: Physicians are exempt from the salary basis and salary test requirements.
- (2) Primarily perform work requiring advanced knowledge; and
- (3) The advanced knowledge must be in a field of science or learning; and
- (4) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

### **Teaching (TR)**

The Teaching Exemption is a Professional Exemption.

To qualify under the Teaching Exemption, an employee must:

- (1) Be paid at least the entrance salary for teachers at Western pursuant to 29 CFR 541.303(d) and 541.600(e); and
- (2) Primary duty is teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge (contributing to the educational development of students), which by its very nature requires exercising discretion and judgment; and
- (3) Are employed and engaged in this activity at an educational institution.

Include: academic teachers; kindergarten/nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; vocal or instrument music instructors.

### **Creative Professional (CP)**

The Creative Professional Exemption is a Professional Exemption.

To qualify under the Creative Professional Exemption, an employee must:

- (1) Receive compensation on a salary basis of not less than \$913 per week (\$47,476 a year); and
- (2) Primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor
  - a. This requirement distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy.
  - b. Exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee.
  - c. Whether the exemption applies must be determined on a case-by-case basis.

The requirements are generally met by actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, novelists, and others as set forth in the regulations. Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality or talent.

Journalists are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product.

### **Computer Professional (CR)**

To qualify under the Computer Employee/Professional Exemption, an employee must:

- (3) Be compensated on a salary basis at a rate of not less than \$134,004 annually (at least \$913 per week); and
- (4) Must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- (5) Primary duty must consist of:
  - a. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or other system functional specifications; or
  - 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; or
  - c. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - d. A combination of the aforementioned duties, the performance of which requires the same level of skills.

Excluded: 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, CAD designers) but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations listed in the primary duties test, above.

### **DEFINITIONS**

**Advanced knowledge:** work that is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment. Usually this knowledge is used to analyze, interpret or make deductions from varying facts or circumstances. Cannot be attained at the high school level.

**Customarily acquired:** Specialized academic training is a standard prerequisite for entrance into the profession. Exemption may be available to employees in 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.

**Customarily and regularly:** Greater than occasional but less than constant; includes work normally done every workweek, but does not include isolated or one-time tasks.

**Customarily recognized department or subdivision:** Unit with permanent status or function.

**Fields of science or learning:** Law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical/chemical/biological sciences and other occupations that have a recognized professional status and are distinguishable from the mechanical arts or skilled trades.

**Management:** Includes but is not limited to, activities such as interviewing, selecting and training employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials/supplies/machinery/equipment/tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; monitoring or implementing legal compliance measures.

**Particular weight:** Factors include whether it is part of the employee's job duties to make such recommendations, the frequency of such recommendations (made, requested and relied upon). Does not include occasional suggestions. May be deemed "particular weight" even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status. Must pertain to employees whom the executive customarily and routinely directs.

**Physicians:** Employees holding a valid license or certificate permitting the practice of medicine and who are engaged in the practice of medicine. An employee who holds the requisite academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession.

**Primary duty:** Principal, main, major or most important duty that the employee performs. Based on all the facts with major emphasis on character of the employee's job as a whole

**Recognized Field of Artistic or Creative Endeavor:** Includes fields such as music, writing, acting and the graphic arts.

**Two or more:** Each employee must customarily and regularly direct the work of two or more full-time employees in the unit. May have >1 per unit.