

## Chapter 22

### EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER, AND OUTSIDE SALES EMPLOYEES

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**22a GENERAL CONSIDERATIONS**

**22a00 Exemptions under the FLSA and Part 541.**

Section 13(a)(1) of the Fair Labor Standards Act (FLSA) exempts from the FLSA’s minimum-wage and overtime requirements every “employee employed in a bona fide executive, administrative, or professional capacity ... or in the capacity of an outside salesman.” Similarly, Section 13(a)(17) exempts certain computer employees from those requirements. They are sometimes referred to collectively as the EAP or white collar exemptions. WHD has defined the exemptions in Part 541 of Title 29 of the Code of Federal Regulations. This FOH chapter refers to the exemptions as Part 541 exemptions.

References:

- 29 USC 213(a)(1), (17)
- [29 CFR 541.100](#) (executive employees)
- [29 CFR 541.200](#) (administrative employees)
- [29 CFR 541.300](#) (professional employees)
- [29 CFR 541.400](#) (computer employees)
- [29 CFR 541.500](#) (outside-sales employees)

**22a01 Changes made by 2019 rule revisions.**

**(a) Effective date.**

Part 541 was amended through a final rule that was published in the Federal Register on September 27, 2019. The revised rule took effect on January 1, 2020.

References:

[84 FR 51230](#)

**(b) Summary of changes.**

(1) *Compensation thresholds.*

The standard salary level, motion-picture base rate, and highly compensated employee compensations thresholds changed as shown in the chart:

Earning threshold	2020 and later	2019 and earlier
Standard salary level	\$684 per week	\$455 per week
Mariana Isls., Guam, Puerto Rico, Virgin Isls.	\$455 per week	\$455 per week
American Samoa	\$380 per week	\$380 per week
HCE annual compensation	\$107,432 per year <i>including</i> at least \$684 per week	\$100,000 per year <i>including</i> at least \$455 per week
Motion-picture base rate	\$1,043 per week	\$695 per week

(2) *Bonuses and incentive payments.*

Employers may use nondiscretionary bonus and incentive payments to satisfy up to 10 percent of the standard salary level if those payments are made at least annually.

(3) *Catch-up payments.*

Employers who use bonuses and incentive payments to satisfy a portion of the salary level have up to one pay period after the end of a year or a final pay period to make a catch-up payment to an employee to meet the standard salary requirement. Catch-up payments to meet the standard salary level are limited to 10 percent of the standard salary level (that is, \$3,556.80). The timing of catch-up payments to highly compensated employees remains unchanged.

(c) **Periods spanning January 1, 2020.**

Pay thresholds for workweeks or pay periods that span January 1, 2020, are prorated to the appropriate daily equivalent for the calendar days in the workweek or pay period. Those amounts are:

Daily equivalent rate	2020–	pre-2020
Standard salary level	\$97.71	\$65
Motion-picture production	\$173.83	\$115.83

For example, a workweek that runs from Monday, December 30, 2019, through Sunday, January 5, 2020, includes two days in December 2019 and five days in January 2020. The daily equivalent of the standard salary rate of \$684 per week is \$97.71; the daily equivalent of the pre-2020 standard salary rate of \$455 per week is \$65. Therefore, an employee who is paid \$618.55 for that workweek—five days at \$97.71 per day plus two days at \$65 per day—has been paid at the standard salary level.

**22a02 Scope and interpretation of Part 541 exemptions.**

(a) **Fair, not narrow, interpretation.**

WHD interprets the Part 541 exemptions fairly, not narrowly. The Supreme Court overturned earlier interpretations that required a narrow reading of the FLSA’s exemptions because nothing in the FLSA’s text indicated that the exemptions should be read that way and instead instructed that the FLSA be given a fair reading.

References:

Encino Motorcars, LLC, v. Navarro, 138 S.Ct. 1134, 1142 (2018)

(b) **Exemptions do not apply to blue-collar workers.**

Part 541 exemptions apply only to bona fide executive, administrative, professional, computer, and outside sales employees. Manual laborers and other blue-collar workers do not qualify for these exemptions.

References:

[29 CFR 541.3\(a\)](#)

**(c) Titles and descriptions insufficient.**

Job titles, job descriptions, and “white collar” status do not determine an employee’s exempt status. Employees are exempt only if they meet the salary and duties requirements.

References:

[29 CFR 541.2](#)

**(d) Other laws and collective bargaining agreements.**

The FLSA sets minimum requirements that cannot be waived or reduced. However, employers must also comply with federal, state, and municipal laws, ordinances, and regulations that go beyond the FLSA (for example, by setting a higher minimum wage or lower maximum workweek) and with obligations under collective-bargaining agreements.

References:

[29 CFR 541.4](#)

**22a03 Exemption period.**

Each workweek constitutes a separate exemption period. Changing an employee’s duties, responsibilities, or salary, even temporarily, might change the employee’s exemption status; an employee who is exempt in one workweek might not be exempt in the next. However, while the exemptions themselves apply from workweek to workweek, some tests require evaluations that cover a longer period. For example:

- (a)** The primary duty test looks at whatever length of time is appropriate to capture the character of the employee’s job as a whole, not at a day-by-day scrutiny of the tasks performed.
- (b)** An employee might receive the amount of the standard salary level in a particular workweek while a longer-term analysis shows that the employee is not actually paid on a salary basis.
- (c)** A supervisor who directs the work of two or more employees in certain weeks might not do so customarily and regularly.

References:

29 USC 207(a)(1)

[29 CFR 776.4](#)

**22a04 Recordkeeping, work schedule, and leave usage policies.**

Employers may require exempt employees to record and track their hours and to work a specified schedule. They may deduct from accrued leave accounts for leave taken (whether for a full or partial day) without affecting employees’ exempt status.

References:

[69 FR 22178](#)  
[WHD Opinion Letter FLSA2005-05 \(Jan. 7, 2005\)](#)

**22a05**      **Definitions of frequently used terms.**

**(a)      Standard salary level.**

Most Part 541 exemptions require that the employee be paid at least the standard salary level. This is compensation, exclusive of board, lodging, or other facilities, of:

- (1)      \$684 per week;
- (2)      \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal Government; or
- (3)      \$380 per week if employed in American Samoa by employers other than the Federal Government.

References:

[29 CFR 541.600](#)

**(b)      Customarily and regularly.**

“Customarily and regularly” means more often than occasional, but it does not have to be constant. It includes tasks performed normally and recurrently every workweek. It does not include isolated or one-time tasks.

References:

[29 CFR 541.701](#)

**(c)      Educational establishment.**

- (1)      “Educational establishment” means an elementary or secondary school system, an institution of higher education, or other educational institution. Elementary and secondary schools are day or residential schools that provide elementary or secondary education, as determined under state law. In most states, this includes the curricula in grades 1 through 12; in many states, it also includes kindergarten. In some states, it includes nursery-school programs and junior-college curricula.
- (2)      “Other educational establishment” includes special schools for gifted children or for mentally or physically disabled children, regardless of the schools’ classification as elementary, secondary, or higher.
- (3)      Post-secondary career programs may qualify as educational establishments. One factor in that determination is whether the program is licensed by the agency responsible for the state’s educational system or accredited by a nationally recognized accrediting organization for career schools.



- (4) Preschools and daycare centers do not qualify as educational establishments unless their grade-school, kindergarten, or nursery-school programs are classified as elementary education under state law. One factor in that determination is whether the establishment is licensed by an agency governing health or welfare rather than an education department.
- (5) The definition of “educational establishment” does not distinguish between public and private or for-profit and non-profit schools.

References:

29 USC 203(v)–(w)

[29 CFR 541.204\(b\)](#)

[WHD Opinion Letter FLSA2008-13NA \(Sept. 29, 2008\)](#)

## **22a06 Primary duty test.**

### **(a) Definition of “primary duty.”**

Generally, employees are exempt only if their primary duty is the performance of exempt work. An employee’s primary duty is the principal, main, major, or most important duty the employee performs. The primary duty test is an employee-specific, case-by-case inquiry with the major emphasis on the character of the employee’s job as a whole.

References:

[29 CFR 541.700\(a\)](#)

### **(b) Time not the sole test.**

Employees who spend more than half their time performing exempt work will generally satisfy the primary duty requirement. The amount of time spent performing exempt work is often a useful guide, but it is not the sole test. Employees who spend less than half their time performing exempt duties still satisfy the primary duty test if the character of their job as a whole supports that conclusion.

References:

[29 CFR 541.700\(b\)](#)

### **(c) Factors to consider.**

An employee’s primary duty depends on factors including:

- (1) The relative importance of the exempt duties compared with other duties,
- (2) The amount of time spent performing exempt work,
- (3) The employee’s relative freedom from direct supervision, and
- (4) The relationship between the employee’s salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

For example, a retailer's assistant managers who perform exempt executive duties such as supervising and directing the work of other employees, ordering merchandise, managing the budget, and authorizing payment of bills may have management as their primary duty even if they spend more than 50 percent of their time performing nonexempt work such as running the cash register. Assistant managers who are closely supervised and earn little more than nonexempt employees, however, would likely not have management as a primary duty.

References:

[29 CFR 541.700\(a\), \(c\)](#)

**(d) Directly and closely related work.**

- (1) Work directly and closely related to the performance of exempt work is itself exempt. Work is "directly and closely related" to exempt work if it relates to exempt work and contributes to or facilitates performance of exempt work. It includes, for example, menial or physical tasks that arise out of exempt duties and routine work without which exempt work cannot be performed properly. Examples include recordkeeping; monitoring and adjusting machinery; taking notes; creating documents or presentations; opening the mail to read it and making decisions; and using a photocopier or fax machine.
- (2) Examples.
  - a. Keeping time, production, or sales records for subordinates is directly and closely related to exempt duties of managing a department and supervising employees.
  - b. Spot-checking and examining subordinates' work to determine whether they are performing their duties properly and whether the product is satisfactory is directly and closely related to managerial and supervisory functions if it is distinguishable from a nonexempt inspector's ordinary work.
  - c. Setting up a machine may be exempt work. In some cases the setup or adjustment of the machine for a particular job is typically performed by the same employees who operate the machine. That is nonexempt production work. In other cases, the setup is a highly skilled operation that may be performed by non-supervisors or, particularly in small plants, by supervisors. If performed by supervisors, it is directly and closely related to the executive's responsibility for subordinates' work performance and for the adequacy of the final product.
  - d. Walking the sales floor to observe the work of supervised sales personnel to determine the effectiveness of their sales techniques, check on the quality of customer service being given, or observe customer preferences is directly and closely related to managerial and supervisory functions.
  - e. A credit manager who checks the status of accounts to determine whether a new order would exceed a credit limit, removes credit reports from the files for analysis, and writes letters giving credit data and experience to other employers or credit agencies is performing work directly and closely related

to exempt administrative duties of administering a credit policy, establishing credit limits, authorizing orders on credit, and deciding whether to allow a customer to exceed a credit limit.

- f. Taking telephone orders for local deliveries is not directly and closely related to a logistics manager's exempt duties in planning a company's transportation, such as securing contracts for shipping merchandise to and from a plant, negotiating with carriers for adjustments for delays or damages, or making substitute arrangements to account for delays, damages, and irregularities in shipments and deliveries.

References:

[29 CFR 541.703](#)

**22a07 Primary duty in special circumstances.**

**(a) Employee working in both exempt and nonexempt positions.**

The primary duty test applies to employees who work for an employer in more than one capacity. For example, an employee may work as an office assistant, a position that is typically nonexempt, and as a manager, a position that is typically exempt. If the exempt managerial duties are the primary duty, the employee will be exempt. If the nonexempt office assistant duties are the primary duty, the employee will be nonexempt. If the employee is nonexempt, normal regular-rate principles apply in calculating overtime due.

References:

[29 CFR 541.700](#)

[WHD Opinion Letter FLSA2005-14 \(Mar. 17, 2005\)](#)

**(b) Combination exemption.**

Employers may tack on or combine exempt work under different Part 541 exemptions to determine an employee's primary duty. Thus, employees who perform a combination of exempt executive, administrative, professional, outside-sales, or computer work may satisfy the primary duty test. In other words, work that is exempt under one section of Part 541 does not defeat an exemption under another section. Tacking on or combining may satisfy only the primary duty test, not the other tests for an exemption.

References:

[29 CFR 541.708](#)

[69 FR 22190](#)

**(c) Trainees.**

- (1) Employees training for an exempt position are not exempt if they are not actually performing the duties required for that exemption.

- (2) Exempt employees on temporary training assignments remain exempt if their primary duty does not change. For instance, exempt store managers who attend a several-week training program that will qualify them for higher-level management positions do not lose the exemption during the training. The managers' primary duty is not changed by the mere fact that they attend the training program.

References:

[29 CFR 541.705](#)  
[WHD Opinion Letter FLSA2008-19 \(Dec. 19, 2008\)](#)

**(d) Primary duty during a strike.**

During a strike, otherwise exempt executive, administrative, and professional employees often perform the work of nonexempt rank-and-file employees. WHD considers the primary duty test to be satisfied during a strike if the otherwise-exempt employee (1) satisfied the primary duty test before the strike and (2) is paid on a salary basis at not less than the standard salary level during the strike.

References:

[WHD Opinion Letter FLSA-329 \(June 18, 1982\)](#)

**22b EXECUTIVE EXEMPTION: 29 CFR 541.100**

**22b00 Criteria for exemption of executive employees.**

To qualify as exempt executives, employees must:

- (a) Be compensated on a salary basis at not less than the standard salary level;
- (b) Have a primary duty of managing the employer's enterprise or a customarily recognized department or subdivision of that enterprise;
- (c) Customarily and regularly direct the work of two or more other employees; and
- (d) Have the authority to hire or fire other employees, or have the decision-maker give their suggestions and recommendations as to other employees' hiring, firing, advancement, promotion, or other change of status particular weight.

References:

[29 CFR 541.100](#)

**22b01 Primary duty test: Managing the enterprise, a department, or a subdivision.**

**(a) Management activities.**

An exempt executive employee's primary duty must be managing the enterprise or one of its customarily recognized departments or subdivisions. "Management" includes:

- Interviewing, selecting, and training employees;

- Setting and adjusting employees' rates of pay and hours of work;
- Planning or directing employees' work;
- Maintaining production or sales records for use in supervision or control;
- Appraising employees' productivity and efficiency to recommend promotions or other changes in status;
- Handling employee complaints and grievances;
- Disciplining employees;
- Determining the techniques to be used;
- Apportioning work among the employees;
- Determining the type of materials, supplies, machinery, equipment or 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; and
- Monitoring or implementing legal compliance measures.

References:

[29 CFR 541.102](#)  
[69 FR 22133](#)

**(b) Department or subdivision.**

- (1) "Customarily recognized department or subdivision" means a recognized subpart within a larger business unit that has a permanent status and continuing function. It distinguishes a collection of employees assigned from time to time to a specific job or series of jobs, on the one hand, from a recognized unit with permanent status and function, on the other. Examples of departments or subdivisions include groupings such as a shift; a functional area (such as back-of-house and front-of-house areas in a store or restaurant); or a small group or team of employees who work on a related project within a larger group. Departments themselves may have subdivisions. For example, a human resources department may have subdivisions for labor relations, pensions and benefits, equal employment opportunity, and personnel management, each with a permanent status and function.
- (2) Each physical establishment of a multi-establishment enterprise qualifies as a recognized subdivision. A recognized subdivision need not be within the employer's physical establishment and may even move from place to place. A supervisor may work in more than one location.
- (3) Continuity of the same subordinate personnel is not necessary. Supervisors may obtain and supervise workers from a pool or supervise a team of workers from other recognized units.

References:

[29 CFR 541.103](#)  
[69 FR 22134](#)

**(c) Concurrent performance of exempt and nonexempt duties.**

- (1) If an employee concurrently (or simultaneously) performs both exempt and nonexempt duties, the character of the employee’s job as a whole determines whether management is the primary duty. Exempt executives do not become nonexempt by performing nonexempt tasks; nonexempt employees do not become executives if they sometimes direct the work of other employees or sometimes give input on performance issues.
- (2) Generally, exempt executives decide when to perform nonexempt tasks, remain responsible for the success or failure of business operations while performing nonexempt tasks, and can simultaneously supervise subordinates and perform nonexempt tasks. For example, restaurant managers who perform nonexempt work like serving customers or cooking food during peak customer periods would be exempt if their primary duty is managing the restaurant—the manager can direct and supervise other employees’ work while performing the nonexempt work.
- (3) On the other hand, employees whose primary duty is ordinary production work or routine, recurrent, or repetitive tasks do not qualify for the executive exemption even if they also have some supervisory responsibilities. Nonexempt employees generally perform exempt work for defined times or are directed by supervisors to perform exempt work. For example, a relief supervisor or working supervisor whose primary duty is working on the production line in a manufacturing plant remains nonexempt even if one responsibility of the job is directing other employees’ work while the exempt supervisor is unavailable.

References:

[29 CFR 541.106](#)

[29 CFR 541.700](#)

[69 FR 22135–22137](#)

[WHD Opinion Letter FLSA2006-29 \(Sept. 8, 2006\)](#)

**22b02 Supervision test: Customarily and regularly directing two or more other employees.**

**(a) Customarily and regularly.**

Whether an employee “customarily and regularly directs the work of two or more other employees” depends on the facts of each situation. An occasional workweek without directing subordinates does not defeat the exemption. A supervisor does not have to work at the same time or in the same location as the supervised subordinates to direct them.

References:

[29 CFR 541.100](#)

[WHD Opinion Letter FLSA2006-35 \(Sept. 21, 2006\)](#)

**(b) Two or more other employees.**

- (1) “Two or more other employees” means two full-time employees or the equivalent. Full-time generally means 40 or more hours per workweek; the subordinates

ordinarily must work 80 total hours per workweek to qualify as the equivalent of two full-time employees. For example, one full-time and two half-time employees are equivalent to two full-time employees, as are four half-time employees. If the subordinates include occasional, temporary, or part-time employees, the employee must supervise two or more subordinates for a combined total of 80 hours of work. However, a full-time employee who works more than 40 hours per workweek counts as only one full-time employee. For example, a full-time employee who works 60 hours per week and a part-time employee who works 20 hours per week have worked for 80 total hours, but their supervisor has supervised only the equivalent of only one full-time and one part-time employee and is not exempt.

- (2) The “other employees” must be employed by the supervisor’s employer. Volunteers, independent contractors and their employees, and other non-employees (e.g., trainees, interns) do not count, though an employee who supervises such workers may be eligible for the administrative exemption.

References:

[29 CFR 541.104](#)

[69 FR 22135](#)

[WHD Opinion Letter FLSA2007-3 \(Jan. 25, 2007\)](#)

[Fact Sheet 17B](#)

**(c) Multiple supervisors permitted.**

- (1) An employer can divide supervisory functions among multiple supervisors, but each supervisor must customarily and regularly direct the work of two or more full-time subordinates to be exempt. For example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each supervisor customarily and regularly directs the work of two of those workers.
- (2) The hours worked by a subordinate employee may not be counted or credited more than once for different supervisors. Thus, if two supervisors share responsibility for supervising the same two employees in the same department, neither supervisor would meet the supervision test. On the other hand, a full-time employee who works half of the time for one supervisor and the other half of the time for a different supervisor may be credited as a half-time employee for each supervisor. If a full-time employee usually works more than 40 hours per week and the employer wants to split the employee’s time evenly between two supervisors, then each supervisor is still supervising only one-half of the full-time employee’s time. Subdividing one full-time employee’s time between more than one supervisor for purposes of this test should never add up to more than one full-time employee.

References:

[WHD Non-Administrator Opinion Letter FLSA-735 \(Nov. 8, 1979\)](#)

[WHD Opinion Letter FLSA2006-35 \(Sept. 21, 2006\)](#)

**22b03 Authority test: Power to hire or fire; particular weight.**

- (a) Particular weight.**

Whether an employee's recommendations are given particular weight depends on factors such as whether it is part of the employee's job duties to make such recommendations and how often those recommendations are made, requested, or relied upon. For example, an employee who provides few recommendations that are never followed would not meet the authority test. Generally, an executive's recommendations must pertain to employees whom the executive customarily and regularly directs or supervises. It does not include occasional suggestions regarding co-workers. An employee may still meet the authority test even if a higher level manager's recommendation has more importance or if a higher level manager or a personnel board makes the final decision.

**(b) Other change of status.**

"Change of status" has the same meaning that the Supreme Court has given the term "tangible employment action" for purposes of Title VII liability: a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. A supervisor who gives recommendations on any of those changes in status may satisfy the authority test.

References:

[29 CFR 541.100](#)

[29 CFR 541.105](#)

[69 FR 22131, 22135](#)

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 761–62 (1998)

**22b04 (Reserved.)**

**22b05 Exemption of business owners with 20 percent equity interest.**

- (a) An employee is an exempt executive if the employee:
- (1) Owns at least a bona fide 20 percent equity interest in the employing enterprise, and
  - (2) is actively engaged in managing the enterprise, which depends on the type, not the amount, of work the employee performs.
- (b) The salary and salary basis requirements do not apply to these owners. The type of business organization (e.g., corporation, partnership, or LLC) does not matter.

References:

[29 CFR 541.101](#)

[69 FR 22132](#)

**22c ADMINISTRATIVE EXEMPTION: 29 CFR 541.200**

**22c00 Criteria for exemption of administrative employees.**

To be exempt as an administrative employee, an employee must:

- (a) Be compensated on a salary or fee basis at not less than the standard salary level;



- (b) 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 customers; and
- (c) Have a primary duty that includes the exercise of discretion and independent judgment with respect to matters of significance.

References:

[29 CFR 541.200](#)

**22c01 Primary duty test: Type of work.**

Work must be of a particular type to satisfy the administrative primary duty test. First, it must be office or non-manual work. Second, it must be directly related to the management or general business operations of the employer or the employer's customers.

**(a) Office or non-manual work.**

Only office or non-manual work satisfies the administrative primary duty test. Thus, for example, production-line workers and employees in maintenance, construction, and similar occupations who perform work involving repetitive operations with their hands, physical skill, and energy do not qualify.

References:

[29 CFR 541.200\(a\)\(2\)](#)

**(b) Directly related to management or general business operations.**

(1) In general.

Work is "directly related to management or general business operations" if it relates to assisting with the running or servicing of the business. A useful way to distinguish exempt administrative work from nonexempt work is to think of production versus staff: An enterprise exists to furnish goods or services to consumers. Work that produces or sells those goods or services is generally nonexempt production work. Work that oversees or performs the business affairs of the enterprise is generally exempt administrative work.

(2) *Examples.*

Departments and functional areas that generally relate to management and business operations include tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations, computer network, internet and database administration, and legal and regulatory compliance. As always, however, the primary duty test depends upon the actual duties a particular employee performs, not on the employee's job title or department.

References:

[29 CFR 541.201\(a\), \(b\)](#)  
[69 FR 22140–22142](#)  
[WHD Opinion Letter FLSA2005-21 \(Aug. 19, 2005\)](#)

**(c) Employer’s customers.**

- (1) Work directly related to the management or general business operations of the employer’s customers can satisfy the primary duty test. For example, employees acting as advisors or consultants to their employer’s clients or customers for a fee—such as tax experts, financial consultants, or management consultants—may be exempt. Those employees satisfy the primary duty test if their work relates to the management or general business operations of either their employer or their employer’s clients or customers.
- (2) The client or customer may be an enterprise or an individual. Administrative duties performed for a client are exempt whether the client is a Fortune 500 company or a sole proprietor.

References:

[29 CFR 541.201\(c\)](#)  
[69 FR 22141–22142](#)

**22c02 Primary duty test: Discretion and independent judgment.**

Work must also have a particular scope to satisfy the administrative primary duty test: It must include the exercise of discretion and independent judgment with respect to matters of significance.

- (a) In general, exercising discretion and independent judgment involves comparing and evaluating possible courses of action and acting or deciding after the various possibilities have been considered. It implies that the employee has authority to make an independent choice free from immediate direction or supervision, but it does not require that the employee exercise ultimate decision-making authority or act completely free from review.
- (b) “Matters of significance” refers to the work’s importance or consequence to the management or general business operations of the employer or the employer’s customers. A matter is not significant merely because employee errors will cause financial losses. For example, a messenger entrusted with carrying large sums of money and an employee who operates expensive equipment do not exercise discretion and independent judgment with respect to matters of significance even though their errors may result in serious consequences or financial losses.

References:

[29 CFR 541.202\(a\), \(c\), \(f\)](#)  
[69 FR 22143](#)  
[WHD Opinion Letter FLSA2006-27 \(July 24, 2006\)](#)

- (c) Whether an employee exercises discretion and independent judgment on matters of significance depends on factors including whether the employee:

- Has authority to formulate, affect, interpret, or implement management policies or operating practices;
- Carries out major assignments in conducting the operations of the business;
- Performs work that affects business operations to a substantial degree, even if only in a particular segment of the business;
- Has authority to commit the employer in matters that have significant financial impact;
- Has authority to waive or deviate from established policies and procedures without prior approval;
- Has authority to negotiate and bind the company on significant matters;
- Gives consultation or expert advice to management;
- Is involved in planning long- or short-term business objectives;
- Investigates and resolves significant matters on management's behalf; or
- Represents the employer in handling complaints, arbitrating disputes, or resolving grievances.

Generally, employees who meet two or three of these factors are exercising discretion and independent judgment. Other factors federal courts have found relevant in assessing whether an employee exercises discretion and independent judgment include whether the employee:

- Is free from direct supervision;
- Has personnel responsibilities,
- Troubleshoots or problem-solves on management's behalf;
- Has authority to handle atypical or unusual situations;
- Has authority to set budgets;
- Is responsible for assessing customer needs;
- Is the employer's primary contact to the public or customers;
- Must anticipate competitive products or services and distinguish them from competitor's products or services;
- Is responsible for advertising or promotion work; or
- Coordinates departments, requirements, or other activities for or on behalf of the employer, clients, or customers.

References:

[29 CFR 541.202\(b\)](#)  
[69 FR 22143-22144](#)

- (d)** Employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed, and on occasion revised or reversed, by superiors. That is, an exercise of discretion and independent judgment may result in recommendations for action rather than action itself. Examples include a credit manager who creates credit policies that higher company officials may approve or disapprove and a management consultant whose proposed changes to a client's business operations must be reviewed or revised by superiors before submitting it to the client.

References:

[29 CFR 541.202\(c\)](#)

**22c03 Duties and tasks that do not qualify as exempt administrative work.**

**(a) Tasks that are mechanical, repetitive, or routine.**

Examples of nonexempt duties that involve clerical or secretarial work; recording or tabulating data; and performing other mechanical, repetitive, and routine work include:

- (1) Entering account-payable and -receivable data;
- (2) Updating records for use in accounting;
- (3) Word processing;
- (4) Sending notices and reminders of contractual obligations;
- (5) Maintaining files and notebooks;
- (6) Receptionist duties such as answering phones, taking messages, and signing for package deliveries; and
- (7) Ordering routine office supplies.

References:

[WHD Opinion Letter FLSA2005-8 \(Jan. 7, 2005\)](#)

**(b) Tasks that are not exercises of discretion and independent judgment.**

Skillfully applying well-established techniques, procedures, or specific standards described in manuals or other sources is not an exercise of discretion and independent judgment. Neither are clerical or secretarial work; recording or tabulating data (even if the employee's title is "statistician"); or performing other mechanical, repetitive, recurrent, or routine work. On the other hand, exempt employees may use manuals, guidelines, or other established procedures if they contain or relate to 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.

References:

[29 CFR 541.202\(e\)](#)

[29 CFR 541.704](#)

**22c04 Special test for educational establishments: academic administrative employees.**

**(a)** The regulations set a special alternative to the standard duties and salaries requirements for certain academic administrative employees. Specifically, the administrative exemption applies to an employee:

- (1) Who is employed by an educational establishment;

- (2) Whose primary duty is performing administrative functions directly related to academic instruction or training in the educational establishment; and
- (3) Who is compensated either:
  - a. On a salary or fee basis at not less than the standard salary level or
  - b. On a salary basis equal to at least the entrance salary for teachers in the employing educational establishment.

References:

[29 CFR 541.204\(a\)](#)

- (b)** Administrative functions are directly related to academic instruction or training if they relate to a school's academic operations and functions (as opposed to administrative functions that are related to general business operations). They include operations directly in the field of education. Employees engaged in academic administrative functions include:
- (1) Superintendents or other heads of elementary or secondary school systems;
  - (2) Assistant superintendents who are responsible for matters such as curriculum, quality and methods of instructing, measuring and testing students' learning potential and achievement, establishing and maintaining academic and grading standards, and other aspects of the teaching program;
  - (3) Principals and vice-principals responsible for operating an elementary or secondary school;
  - (4) Department heads in institutions of higher education responsible for the various subject-matter departments;
  - (5) Academic counselors who perform work such as administering school testing programs, assisting students with academic problems, and advising students on degree requirements;
  - (6) And other employees with similar responsibilities.

References:

[29 CFR 541.204\(c\)](#)

- (c)** Academic administrative functions do not include jobs relating to areas outside the educational field. These include areas such as building management, maintenance, student health, and student recruitment. Examples of employees who do not perform academic administrative functions are admissions counselors, social workers, psychologists, dieticians, and lunch-room managers, though some of these may be exempt on other bases.

References:

[29 CFR 541.204\(c\)\(2\)](#)

[WHD Non-Administrator Opinion Letter \(Apr. 20, 1999\)](#)

**22d PROFESSIONAL EXEMPTION: 29 CFR 541.300**

**22d00 Types of professional employees.**

There are three types of professional exemption, each with its own duties test: learned, creative, and teaching.

**22d01 Learned professionals: Criteria.**

To be exempt as a learned professional:

- (a) The employee must be compensated on a salary or a fee basis at not less than the standard salary level;
- (b) The employee's primary duty must be performing work that requires advanced knowledge, defined as work that is predominantly intellectual in character and requires the consistent exercise of discretion and judgment;
- (c) The advanced knowledge must be in a field of science or learning; and
- (d) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

References:

[29 CFR 541.301\(a\)](#)

**22d02 Learned professionals: Primary duty test.**

**(a) Three-part test to determine primary duty.**

The primary duty test for learned professionals has three parts. The employee must perform work requiring advanced knowledge; the advanced knowledge must be in a field of science or learning; and the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

(1) *Work requiring advanced knowledge.*

- a. This work is predominantly intellectual in character and requires the consistent exercise of discretion and judgment. Learned professional work is therefore distinguished from routine work, whether mental, manual, mechanical, or physical. Learned professionals generally use their advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances.
- b. Advanced knowledge cannot be attained at the high school level.
- c. The "discretion and judgment" standard is less stringent than the "discretion and independent judgment" standard under the administrative exemption.

References:

[29 CFR 541.301\(b\)](#)  
[69 FR 22151](#)

(2) *Fields of science or learning.*

These include law; medicine; theology; accounting; actuarial computation; engineering; architecture; teaching; various types of physical, chemical, and biological sciences; and pharmacy. The phrase also includes similar occupations that have a recognized professional status and can be distinguished from the mechanical arts or skilled trades—that is, distinguished from occupations where the knowledge, even if fairly advanced, is not in a field of science or learning.

References:

[29 CFR 541.301\(c\)](#)

(3) *Customarily acquired by a prolonged course of specialized intellectual instruction.*

- a. This phrase restricts the exemption to occupations where specialized academic training is a standard prerequisite for entrance. The best evidence of meeting this requirement is having the appropriate academic degree. However, “customarily” means the exemption is available to employees who have substantially the same knowledge and perform substantially the same work as the degreed employees but who obtained the advanced knowledge through a combination of work experience and intellectual instruction. For example, the exemption is available to the occasional lawyer who has not gone to law school or the occasional chemist who does not possess a degree in chemistry.
- b. The exemption does not apply to occupations where a 4-year degree in any field or a 2-year degree is the sole educational prerequisite. Nor does it apply to occupations that customarily may be performed with knowledge or skill acquired by experience; through an apprenticeship; or with training in how to perform routine mental, manual, mechanical or physical processes.

References:

[29 CFR 541.301\(d\)](#)  
[69 FR 22150](#)

**(b) Curricula, certification, and licensing.**

- (1) Accredited curricula and certification programs are relevant only to the extent they are evidence that a prolonged course of specialized intellectual instruction has become a standard prerequisite for the occupation. The existence of a certifying organization, that organization’s identity, and a legal requirement to obtain certification do not mean that a curriculum or certification involves a prolonged course of specialized intellectual instruction. For example, physician assistants generally meet the duties test for exempt learned professionals because certification requires 4 years of specialized post-secondary education. Cosmetologists, on the other hand, do not qualify because certification does not require a prolonged course of specialized intellectual instruction.

- (2) Possessing a license to practice a certain occupation is a factor, but not a determining factor, in determining whether an employee is an exempt learned professional. As with curricula and certification programs, a license is relevant only to the extent it is evidence that a prolonged course of specialized intellectual instruction has become a standard prerequisite for the occupation. Further, employees who are licensed to perform exempt work are not exempt unless they actually perform exempt work.

References:

[69 FR 22157](#)

**(c) Expansion of exemption to new fields.**

The learned-professional exemption can grow to new occupations. When knowledge develops, academic training broadens and specialized degrees are offered in new and diverse fields, creating new specialists in particular fields of science or learning. When an advanced specialized degree has become a standard requirement for an occupation, that occupation may have acquired the characteristics of a learned profession. Similarly, new accrediting and certifying organizations and new specialized curricula and certification programs may arise. If obtaining credentials from those organizations becomes a standard requirement to enter into an occupation, the occupation may have acquired the characteristics of a learned profession.

References:

[29 CFR 541.301\(f\)](#)

**22d03 Learned professionals: Practice of law or medicine.**

**(a) Special criteria for employees practicing law or medicine.**

Regardless of their pay, employees are exempt learned professionals if they:

- (1) Hold a valid license or certificate permitting the practice of law or medicine or any of their branches, and are actually engaged in the practice thereof; or
- (2) Hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession.

References:

[29 CFR 541.304\(a\)](#)

**(b) Scope of “physicians.”**

Employees practicing medicine include physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. “Physicians” includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy),



podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

References:

[29 CFR 541.304\(b\)](#)

**(c) Salary level and salary basis requirements inapplicable.**

The salary level and salary basis requirements do not apply to the practitioners described in this section. Those requirements do apply to other medical professionals, including pharmacists, nurses, therapists, technologists, sanitarians, dieticians, social workers, psychologists, psychometrists, physician assistants, nurse practitioners, and other professions that service the medical profession.

References:

[29 CFR 541.304\(d\)](#)

[29 CFR 541.600\(e\)](#)

**22d04 Creative professionals: Criteria.**

To be exempt as a bona fide creative professional, the employee must:

- (a)** Be compensated on a salary or fee basis at not less than the standard salary level, and
- (b)** Have a primary duty of performing work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

References:

[29 CFR 541.302](#)

**22d05 Creative professionals: Primary duty test.**

- (a)** An exempt creative professional's primary duty must be to perform work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor, as opposed to routine mental, manual, mechanical, or physical work. This requirement distinguishes creative professional work from work that primarily depends on intelligence, diligence, and accuracy. Work that can be performed by a person with general manual or intellectual ability and training is not exempt professional work.

References:

[29 CFR 541.302\(a\), \(c\)](#)

- (b)** Examples of recognized fields of artistic or creative endeavor are music, writing, acting, and the graphic arts.

References:

[29 CFR 541.302\(b\)](#)

- (c) The creative-professional exemption depends upon how much invention, imagination, originality, or talent the employee exercises. The requirements are generally met by actors; musicians, composers, conductors, and soloists; painters who are given at most the subject matter of their painting; cartoonists who are told only the title or underlying concept for a cartoon and must rely on their own creative ability to express the concept; essayists, novelists, short story writers and screenplay writers who choose their own subjects and submit completed works to their employers; and persons in the more responsible writing positions in advertising agencies. Copyists, animators of motion-picture cartoons, and retouchers of photographs would not be exempt because that work is not creative in character.

References:

[29 CFR 541.302\(c\)](#)

## **22d06 Teaching professionals: Criteria.**

- (a) To be exempt as a teaching professional, the employee must:
- (1) Have a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge; and
  - (2) Be employed and engaged in this activity as a teacher in an educational establishment that employs the employee.
- (b) There are no salary, salary basis, minimum-education, or academic-degree requirements for teaching professionals. Teaching by its very nature requires the exercise of discretion and judgment, so there is no separate discretion-and-judgment requirement for teaching professionals.

References:

[29 CFR 541.204\(b\)](#) (definition of “educational establishment”)

[29 CFR 541.303\(a\), \(d\)](#)

[Fact Sheet 17D](#)

[FOH 22a05\(c\)](#) (definition of “educational establishment”)

- (c) Teaching certificates identify some, but not all, exempt teachers.
- (1) Elementary and secondary teacher’s certificates are a clear means of identifying exempt teaching professionals. Teachers who possess a teacher’s certificate qualify for the exemption regardless of the terms (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) a state uses to refer to different kinds of certificates.
  - (2) However, employees who satisfy the teaching-professional test are exempt whether they hold a certificate or not. Not all schools require teachers to hold a teaching certificate, and teaching certificates are not generally necessary to work in higher-education institutions or other educational establishments.

References:

[29 CFR 541.303\(c\)](#)

- (d) Exempt teaching professionals include teachers of:
- (1) Regular academic courses,
  - (2) Kindergarten or nursery school,
  - (3) Gifted or disabled children,
  - (4) Skilled and semiskilled trades and occupations,
  - (5) Automobile driving,
  - (6) Aircraft flight instruction,
  - (7) Home economics,
  - (8) Vocal or instrumental music, and
  - (9) University courses.
- (e) Activities such as athletics, drama, speech, debate, and journalism, whether curricular or extracurricular, are a recognized part of the schools' responsibility in educating students. Generally, those acting as coaches, moderators, or advisors for such activities are performing exempt teaching duties and are exempt if that coaching, moderating, or advising is their primary duty.

References:

[29 CFR 541.303\(b\)](#)

[WHD Opinion Letter FLSA2005-34 \(Sept. 23, 2005\)](#)

[WHD Opinion Letter FLSA2018-6 \(Jan. 5, 2018\)](#)

**22d07 Teaching professionals: Particular employees.**

- (a) **Coaches.**
- (1) Athletic teams are a recognized part of students' educational development. Therefore, educational-establishment employees who coach athletic teams are engaged in exempt teaching work, and an employee whose primary duty is such coaching is an exempt teaching professional.
  - (2) Coaches are not exempt if their primary duties are recruiting students to play sports or visiting schools and athletic camps to conduct student interviews. The amount of time the coach spends instructing student-athletes is a relevant but not exclusive factor in determining the coach's primary duty.
  - (3) Nonexempt employees of an educational establishment who volunteer as coaches are considered to be volunteers, not employees, while they coach if their coaching duties are not the same or similar to the nonexempt duties they are employed to perform.

References:

[WHD Opinion Letter FLSA2004-8 \(Sept. 7, 2004\)](#)

[WHD Opinion Letter FLSA2018-6 \(Jan. 5, 2018\)](#)

[Fact Sheet 17S](#)

**(b) Substitute teachers.**

Substitute teachers qualify for the professional exemption if their primary duty is teaching and imparting knowledge in an educational establishment.

References:

[WHD Opinion Letter FLSA2005-39 \(Oct. 13, 2005\)](#)

[WHD Opinion Letter FLSA2008-7 \(Sept. 26, 2008\)](#)

**(c) Preschool teachers**

Preschools and daycare centers (particularly at the earliest ages of preparing children to enter school) may engage in some educational activities. If the facility qualifies as an educational establishment, bona fide teachers may qualify for exemption under the same conditions as a teacher in an elementary or secondary school. Conversely, employees whose primary duty is to provide custodial care for children's basic physical needs are not exempt. If the facility does not qualify as an educational establishment, its employees are not exempt teaching professionals.

References:

[WHD Non-Administrator Opinion Letter FLSA2008-13NA \(Sept. 29, 2008\)](#)

**(d) Career- or trade-school instructors.**

Instructors at post-secondary career or trade schools may be exempt if they are employed in an educational establishment. If so, the instructors will be exempt if their primary duty is teaching.

References:

[WHD Opinion Letter FLSA2005-29 \(Aug. 26, 2005\)](#)

[WHD Opinion Letter FLSA2005-38 \(Oct. 13, 2005\)](#)

[WHD Opinion Letter FLSA2006-41 \(Oct. 26, 2006\)](#)

[WHD Opinion Letter FLSA2008-9 \(Oct. 1, 2008\)](#)

**(e) Adult- or continuing-education instructors.**

Instructors in adult- or continuing-education programs are exempt if they are employed in an educational establishment and their primary duty is teaching.

References:

[WHD Opinion Letter FLSA2019-4 \(Apr. 2, 2019\)](#)

**(f) Job Corps personnel.**

A Job Corps center that provides basic educational instruction and vocational training is considered an educational establishment. Job Corps personnel whose primary duty is teaching are exempt teaching professionals.

References:

[WHD Opinion Letter FLSA \(September 27, 1968\)](#)

**(g) Flight instructors.**

Flight instructors are exempt teaching professionals if they:

- (1) Are certified in accordance with Part 61 of the Federal Aviation Administration (FAA) regulations, 14 CFR 61;
- (2) Are employed as an instructor by a flight school approved by the FAA under 14 CFR 141; and
- (3) Have the primary duty of teaching.

Examples of exempt teaching activities in this context include student flight instruction, including related ground training such as the maintenance of an airplane engine; instruction in FAA regulations, navigation, meteorology, and radio procedure; maintenance of student progress and accomplishment records; scheduling of students and aircraft used for instruction; liaising with the FAA for current teaching techniques and requirements; and performing minor repairs on aircraft used in training.

References:

[WHD Opinion Letter FLSA \(June 2, 2004\)](#)

**(h) Nonexempt employee working part-time as a teacher.**

Employees who hold full-time, nonexempt positions with an educational establishment and also teach a course, either as a separate responsibility or as part of their duties, are not exempt because their primary duty is performing the nonexempt work of their full-time position.

References:

[WHD Opinion Letter FLSA2005-29 \(Aug. 26, 2005\)](#)

**22d08 Docking salaries of teachers or practitioners of law or medicine.**

The salary level and salary basis tests do not apply to teachers or practitioners of law or medicine. Employers may therefore dock the pay of those employees for partial-day absences without losing the exemption.

References:

[WHD Opinion Letter FLSA2005-34 \(Sept. 23, 2005\)](#)

**22e           COMPUTER EMPLOYEE EXEMPTION: 29 CFR 541.400**

**22e00       Generally.**

When a 1990 statute instructed the Department of Labor (DOL) to enact regulations that would allow certain computer employees to qualify for FLSA Section 13(a)(1)'s executive, administrative, or professional exemptions, DOL adopted a rule under which they could qualify as learned professionals. In 1996, Congress enacted FLSA Section 13(a)(17), which codified specific duties and wages that would qualify computer employees as exempt. That statute did not give DOL authority to interpret or define those statutory definitions, but it also did not repeal the requirement that DOL have regulations allowing those employees to qualify for a Section 13(a)(1) exemption. The Department thus amended its regulations so qualifying as exempt under the statute also satisfies the requirements for the learned professional exemption. Now, this single test qualifies a computer employee as exempt under both the learned professional exemption and the special exemption for computer employees.

References:

[69 FR 22158–22160](#)

[Field Assistance Bulletin \(FAB\) 2006-3 \(Dec. 14, 2006\)](#)

**22e01       Criteria for exemption of computer employees.**

- (a) To be exempt as a bona fide computer employee, the employee must:
- (1) Be compensated on a salary or fee basis at a rate not less than the standard salary level or, if paid on an hourly basis, not less than \$27.63 per hour;
  - (2) Be employed as a computer system analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field performing the required duties; and
  - (3) Have a primary duty that consists of:
    - a. Applying systems-analysis techniques and procedures, including consulting with users, to determine functional specifications of hardware, software, or systems;
    - b. Designing, developing, documenting, analyzing, creating, testing, or modifying computer systems or programs, including prototypes, based on and related to user or system design specifications;
    - c. Designing, documenting, testing, creating, or modifying computer programs related to machine operating systems; or
    - d. A combination of these duties, the performance of which requires the same level of skills.
- (b) The exemption does not include employees engaged in manufacturing or repairing computer hardware and related equipment. Nor does it include employees whose work is highly dependent upon, or facilitated by, the use of computers and software (*e.g.*, engineers, drafters

and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis, programming, or other similarly skilled occupations identified in the primary duty test. Employees who assist computer users with discrete hardware or software issues—that is, employees often referred to as IT or help-desk specialists or assistants—are generally not exempt.

- (c) “Similarly skilled” computer employees are exempt only if they satisfy the salary and primary duty tests. If they do, the exemption applies regardless of job title—job duties, not job title, determine whether the exemption applies.

References:

[29 CFR 541.400–541.402](#)

[69 FR 22158–22160](#)

[69 FR 22176](#)

[FOH 22j19](#)

**22e02 Other exemptions also applicable.**

Employees in the computer field may also qualify for the executive or administrative exemptions. For example, a lead programmer may be an exempt executive; an engineer who plans and coordinates the development of systems to solve complex business, scientific, or engineering problems of the employer’s customers qualifies for the administrative exemption. However, as described in FOH 22g02(b), employees who are exempt only under the computer-employee exemption cannot qualify as highly compensated employees.

References:

[29 CFR 541.402](#)

**22f OUTSIDE SALES EXEMPTION: 29 CFR 541.500**

**22f00 Criteria for exemption of outside sales employees.**

- (a) To be exempt as an outside-sales employee, the employee must:
  - (1) Have a primary duty of:
    - a. making sales or
    - b. 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
  - (2) Be customarily and regularly engaged away from the employer’s place or places of business in performing his or her primary duty.

The salary and salary basis tests do not apply to outside-sales employees.

- (b) Work performed incidental to and in conjunction with the employee’s own outside sales or solicitations, including incidental deliveries and collections, is exempt outside-sales work. Other work that furthers the employee’s own sales efforts (for example, writing sales reports,

updating or revising the employee's sales or display catalogue, planning itineraries, and attending sales conferences) is also considered exempt work.

References:

[29 CFR 541.500](#)

**22f01 Primary duty test: Making sales or obtaining orders.**

- (a) "Sales" include any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition. It includes the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. A transaction will generally qualify as a "sale" if an employee obtains from the solicited party the maximum possible commitment given the market in which the employee operates.

References:

29 USC 3(k)

[29 CFR 541.501\(b\)](#)

[69 FR 22161–22163](#)

Christopher v. SmithKline Beecham Corp., 567 U.S. 142 (2012)

- (b) "Obtaining orders or contracts for services or for the use of facilities" extends the outside-sales exemption to more than just sales of commodities. Obtaining orders "for the use of facilities" includes selling time on radio or television, soliciting advertising for newspapers and other periodicals, and soliciting of freight for railroads and other transportation agencies.

References:

[29 CFR 541.501\(c\)](#)

- (c) "Services" extends the outside-sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

References:

[29 CFR 541.501\(d\)](#)

**22f02 Customarily and regularly away from employer's place of business.**

- (a) Employees are "away from the employer's place of business" if they are somewhere that they reach by leaving the employer's place of business. An employee who makes sales at the customer's place of business or, if selling door-to-door, at the customer's home is making sales "away from the employer's place of business," as is an employee who makes sales at a public or third-party site that is not the employer's place of business. However, outside sales do not include sales made by mail, telephone, or the internet unless that contact is merely an adjunct to personal visits to the customer.

References:

[29 CFR 541.502](#)



[WHD Opinion Letter FLSA2007-1 \(Jan. 25, 2007\)](#)

[WHD Opinion Letter FLSA2007-2 \(Jan. 25, 2007\)](#)

- (b) Any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even if the employer is not in any formal sense the owner or tenant of the property. However, displaying samples in hotel sample rooms during trips from city to city are not considered as the employer's places of business. Similarly, if selling, rather than just sales promotion, occurs, a display of products at a trade show of short duration (such as one or two weeks) is not considered an employer's place of business.

References:

[29 CFR 541.502](#)

- (c) An employee who does not qualify for the outside-sales exemption may still be exempt as a commission-based sales employee under Section 7(i) of the FLSA, which is described in FOH 21.

References:

29 USC 207(i)

[29 CFR 779.410–779.420](#)

[69 FR 22162](#)

FOH 21

#### **22f03 Promotion work.**

Whether promotion work is exempt outside-sales work depends on the circumstances. Promotional work incidental to and in conjunction with an employee's own outside sales or solicitations is exempt work. Promotional work that is *not* incidental to an employee's own outside sales, or that is incidental to sales made or to be made by someone else, is not exempt outside sales work. Arranging merchandise on shelves or replenishing stock is not exempt outside sales work unless it is incidental to and in conjunction with the employee's own outside sales.

References:

[29 CFR 541.503](#)

#### **22f04 Drivers who sell.**

- (a) Drivers who both deliver and sell products are exempt outside-sales employees if their primary duty is making sales. Loading, driving, and delivering the products that the employee sells is work incidental to and in conjunction with the employee's own outside sales and is exempt outside sales work.
- (b) Several factors affect whether a driver's primary duty is making sales. These include:
  - (1) Comparing the driver's duties with those of employees engaged as drivers and as salespersons;

- (2) Whether the driver has required sales or solicitation licenses;
  - (3) Whether there are customary or contractual arrangements concerning amounts of products to be delivered;
  - (4) The description of the employee's occupation in collective bargaining agreements;
  - (5) The duties and qualifications given by the employer for the position when hiring;
  - (6) Sales training and attendance at sales conferences;
  - (7) The method of payment; and
  - (8) The proportion of the employee's earnings attributable to sales.
- (c) See [29 CFR 541.504\(c\)](#) and [\(d\)](#) for examples of drivers who would, and who would not, qualify as exempt outside sales employees.

References:

[29 CFR 541.504](#)

## **22g HIGHLY COMPENSATED EMPLOYEE TEST: 29 CFR 541.601**

### **22g00 Background.**

The highly compensated employee (HCE) test is an alternative method for determining whether an employee qualifies as an exempt executive, administrative, or professional employee. High compensation itself strongly indicates that a white-collar employee is exempt, making a detailed analysis of job duties unnecessary. Because the compensation itself is an indication of exempt status, the employee needs to regularly and customarily perform only a single executive, administrative, or professional duty or responsibility to qualify as exempt.

References:

[29 CFR 541.601](#)

[69 FR 22173–22174](#)

### **22g01 Test for highly compensated employees.**

An employee is an exempt HCE if the employee:

- Has a primary duty that includes performing office or non-manual work;
- Receives total annual compensation of at least \$107,432, including at least \$684 per week on a salary basis; and
- Customarily and regularly performs at least one exempt executive, administrative, or professional duty or responsibility.

References:

[29 CFR 541.601](#)

**22g02**      **Qualifying duties.**

**(a)**      **Single customary and regular duty qualifies.**

Because the high compensation itself is an indication of exempt status, employees who meet the HCE earnings threshold are exempt if they customarily and regularly perform even one exempt executive, administrative, or professional duty. For example, an employee who meets the earning thresholds might customarily and regularly direct the work of two or more other employees but meet none of the other requirements for the executive exemption; the employee would be an exempt HCE.

References:

[29 CFR 541.601\(c\)](#)  
[69 FR 22173–22174](#)

**(b)**      **Computer-related occupations and duties do not qualify.**

The Department defined the executive, administrative, and professional exemptions by regulation. It created the HCE test by regulation to determine whether employees satisfy one of those definitions. The duties for the computer-employee exemption, on the other hand, are defined by the FLSA itself. Because the Department’s regulation cannot override the FLSA, the abbreviated duties test under the HCE exemption cannot be applied to employees in computer-related occupations.

References:

[69 FR 22176](#)

**22g03**      **Compensation.**

**(a)**      **Required compensation.**

- (1)      An employee’s pay must satisfy two conditions to qualify as an HCE:
  - a.      The employee’s annual compensation must total at least \$107,432.
  - b.      The employee must receive at least \$684 per week (\$35,568 per year) paid on a salary or fee basis.

That is, the employee must be paid a weekly salary that is at least \$684. The balance of the employee’s annual compensation may be in commission and nondiscretionary bonus and incentive payments. The difference between discretionary and nondiscretionary payments is discussed in FOH 31.

- (2)      For example, an employee’s annual compensation is \$131,200—a monthly salary of \$2,600 (\$31,200 per year) and commissions of \$100,000. The employee meets the annual-compensation threshold. However, the employee would not qualify as an HCE because the employee’s per-week salary (\$31,200 divided by 52 weeks) is only \$600, which is less than the required \$684.

- (3) Total annual compensation may include commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned during a year. It may not include board, lodging, and other facilities. Nor may it include payments for medical insurance, payments for life insurance, contributions to retirement plans, or the cost of other fringe benefits.

References:

[29 CFR 541.601\(a\), \(b\)\(1\)](#)

[29 CFR 541.606](#)

[29 CFR 531.29–531.32](#) (board, lodging, and other facilities)

[29 CFR Part 778](#) (discretionary and non-discretionary payments)

FOH 31 (discretionary and non-discretionary payments)

FOH 30 (board, lodging, and other facilities)

**(b) Catch-up payments.**

- (1) If an employee's total annual compensation does not reach the high-compensation threshold by the last pay period of the year, the employer may, during the last pay period or within one month after the end of the year, make a final payment sufficient to meet the threshold. A catch-up payment made after the end of the year may count only toward the previous year's total annual compensation; it may not count toward the total annual compensation in the year it was paid.
- (2) If the employer does not make a catch-up payment, the employee does not qualify as an HCE, but might for a Part 541 exemption under the general tests.

References:

[29 CFR 541.601\(b\)\(2\)](#)

**(c) Calculating total annual compensation.**

- (1) The employer may use any 52-week period as the compensation year, such as a calendar year, a fiscal year, or an anniversary-of hire-year. If the employer does not identify some other period in advance, the calendar year applies.
- (2) Employees who do not work a full year for the employer may qualify as exempt HCEs. To do so, they must receive a portion of the annual threshold amount proportional to the number of weeks employed. As with employees employed for an entire year, an employer has one month after the final or year-end pay period to make a catch-up payment to meet the required compensation threshold.

References:

[29 CFR 541.601\(b\)\(3\), \(4\)](#)

**22h SALARY LEVEL AND SALARY BASIS REQUIREMENTS: 29 CFR 541.600**

**22h00 General.**

- (a) Part 541 exemptions generally have two salary-related requirements:
- (1) The *salary basis test* requires that the employee be paid a predetermined and fixed salary that cannot be reduced because of variations in the quality or quantity of the work performed.
  - (2) The *salary level test* requires that the employee be paid a minimum specified amount, which is generally the standard salary level.
- (b) Satisfying the salary requirements alone does not mean that an employee is exempt. The employee must also pass the applicable duties test.

References:

[29 CFR 541.600](#)

**22h01 Occupations exempt from one or both salary tests.**

- (a) Occupations with alternative salary level tests.
- (1) *Academic administrative employees* may be compensated on a salary basis at a rate no lower than the entrance salary for teachers in the employing educational establishment.
  - (2) *Computer-related employees* may be compensated on an hourly basis at not less than \$27.63 per hour.
- (b) **Occupations exempt from the salary basis test.**

Employees in the motion-picture producing industry may be compensated on a non-salary basis if their daily base pay equates to at least \$1,043 per six-day workweek (that is, \$173.83 per day).

- (c) **Occupations exempt from both tests.**

Persons in these occupations do not have a minimum required salary and need not be paid on a salary basis:

- (1) Teaching professionals;
- (2) Practicing lawyers;
- (3) Practicing physicians, including interns and residents;
- (4) Outside-sales employees; and
- (5) Executives who own a bona fide 20% equity interest in the employing enterprise and are actively engaged in managing the enterprise.

References:

[29 CFR 541.101](#)

[29 CFR 541.303](#)  
[29 CFR 541.304](#)  
[29 CFR 541.400\(b\)](#)  
[29 CFR 541.500](#)  
[29 CFR 541.600\(c\), \(e\)](#)  
[29 CFR 541.709](#)

**22h02 Salary level test.**

- (a) Compensation at standard salary level required.

Most Part 541 exemptions require that the employee be compensated at a rate not less than the standard salary level. Executive employees must be paid on a salary basis; administrative, professional, and computer employees may be paid on a salary basis or on a fee basis. The standard salary level is not a minimum-wage requirement; no employer is required to pay an employee a standard salary level unless the employer is claiming an exemption that requires paying such a salary.

References:

[29 CFR 541.600\(a\)](#)

- (b) **Current and former earnings thresholds.**

Earning threshold	2020 and later	2019 and earlier
Standard salary level	\$684 per week	\$455 per week
Mariana Isls., Guam, Puerto Rico, Virgin Isls.	\$455 per week	\$455 per week
American Samoa	\$380 per week	\$380 per week
HCE annual compensation	\$107,432 per year <i>including</i> at least \$684 per week	\$100,000 per year <i>including</i> at least \$455 per week
Motion-picture base rate	\$1,043 per week	\$695 per week

- (1) The amounts for the standard salary level, the HCE annual compensation level, and the motion-picture base rate are exclusive of board, lodging, and other facilities.
- (2) Employers may satisfy up to ten percent of the standard salary level with nondiscretionary bonus, incentive, and commission payments.
- (3) The standard salary levels for the Northern Mariana Islands, Guam, Puerto Rico, the Virgin Islands, and American Samoa apply to employers other than the federal government.

References:

[29 CFR 541.600](#)  
[29 CFR 541.601](#)  
[29 CFR 541.709](#)

**(c) Standard salary level measured by different pay periods.**

The weekly salary basis may be converted for pay periods longer than one week as shown in this chart. However, the shortest period of payment that will meet this compensation requirement is one week.

Earning threshold	Weekly	Biweekly	Semimonthly	Monthly	Annual
Standard salary level	\$684	\$1,368	\$1,482	\$2,964	\$35,568
Northern Mariana Islands, Guam, Puerto Rico, U.S. Virgin Islands <i>and</i> pre-2020 standard	\$455	\$910	\$985.83	\$1,971.67	\$23,660
American Samoa	\$380	\$760	\$823.33	\$1,646.67	\$19,760

References:

[29 CFR 541.600\(b\)](#)

**(d) Employees who work less than a full year.**

Employees who do not work a full year meet the salary test if they receive a pro-rata portion of the standard salary level based on the number of workweeks employed. As with employees who work for the full year, an employer may make a final catch-up payment of nondiscretionary bonuses, commissions, and incentive payments, constituting up to 10% of the employee's pro-rata salary, within one pay period after the end of an employee's employment.

References:

[29 CFR 541.602\(a\)\(3\)](#)  
[FOH 22h03\(e\)](#) (catch-up payments)

**(e) Salary paid by joint employers.**

If an employee is jointly employed by two or more employers that each pay the employee on a salary basis, the combined salaries determine whether the minimum salary requirement has been met.

References:

[29 CFR 791.2\(a\)](#)

**22h03 Nondiscretionary bonus income included in standard salary level.**

**(a) Income that may be counted toward 10 percent of standard salary level.**

An employer may use nondiscretionary bonuses, incentives, and commissions, paid annually or more frequently, to satisfy up to 10 percent of the standard salary level. For annual bonuses, the employer may use as the year any 52-week period, such as a calendar year, a fiscal year, or an anniversary-of-hire year. If the employer does not identify a different period in advance, the calendar year will apply.

References:

[29 CFR 541.602\(a\)\(3\)](#)

**(b) No cap on employee earnings.**

The 10-percent “cap” is a ceiling on the amount an employer may credit toward the standard salary level. It does not limit or restrict the bonuses an employee can earn or that an employer may pay. Employees are free to earn, and employers are free to pay, amounts above that cap.

References:

[29 CFR 541.604\(a\)](#)  
[84 FR 51249](#)

**(c) Discretionary vs. nondiscretionary payments.**

The principles in Section 7 of the FLSA and the implementing regulations in Part 778, which are discussed in FOH 32, determine whether bonuses and other forms of compensation are nondiscretionary. In general:

- (1) Amounts promised in advance or that an employee has a contractual right, express or implied, to receive are nondiscretionary.
- (2) An employer may have discretion over whether to pay an employee a bonus and over the amount to pay as a bonus. If the employer retains discretion over both the payment and the amount of the payment until at or near the time that the bonus is to be paid—for example, a surprise holiday bonus—the payment is discretionary. Otherwise, it is nondiscretionary.

References:

29 USC 207  
[29 CFR Part 778](#)  
FOH 32

**(d) Catch-up payments.**

- (1) *Catch-up payment allowed.*

If by the last pay period of the year the sum of the payments to the employee—salary plus nondiscretionary bonuses, incentives, and commissions—is less than the annualized standard salary level, the employer may make a catch-up payment to reach that level. The deadline to make that catch-up payment is one pay period after the end of the year. A catch-up payment is limited to 10 percent of the annualized



salary and counts only toward the earlier year’s salary requirement, not the year in which it is paid.

(2) *Maximum catch-up payment in general.*

Because nondiscretionary payments may count for only 10 percent of the standard salary level, the maximum catch-up payment is 10 percent of the annualized standard salary level, shown in this chart:

Earning threshold	Max. catch-up payment
Standard salary level	\$3,556.80
Mariana Isls., Guam, Puerto Rico, U.S. Virgin Isls.	2,366.00
American Samoa	1,976.00

(3) *Maximum catch-up payment to particular employees.*

For the same reason, the maximum catch-up payment to a particular employee is the difference between the 10-percent cap and the amount of nondiscretionary bonuses, incentives, and commissions the employee has already received. For example, an employee who had received \$3,000 in nondiscretionary bonuses through the last pay period of the year could receive a catch-up payment of no more than \$556.80—the difference between the \$3,556.80 cap and the \$3,000 already received.

Because of this 10 percent cap, it is impossible for a catch-up payment to reach the annualized standard salary level unless the employee’s weekly salary has been at least 90 percent of that level.

(4) *Catch-up cap does not limit employee earnings or employer payments.*

As described in FOH 22h03(b), the 10-percent “cap” is a ceiling on the amount an employer may credit toward the standard salary level. It does not limit or restrict the bonuses an employee can earn or that an employer may pay. Employees are free to earn, and employers are free to pay, amounts above that cap.

(5) *Consequences of missed catch-up payment.*

- a. If an employer does not make a timely catch-up payment that raises an employee’s total payments to the annualized standard salary level, the employee will have been nonexempt for the previous year and entitled to overtime pay for overtime hours worked during that year. Late or insufficient catch-up payments do not satisfy the obligation to pay this overtime pay.
- b. An employer acting in good faith may classify the employee as exempt during the new year if the employee receives on a salary basis at least 90 percent of the standard salary level.

(6) *30-day catch-up deadline does not apply.*

Catch-up payments to meet the standard salary level must be made within one pay period after the end of the year. The one-month deadline to make a catch-up payment applies only to catch-up payments to meet the HCE total annual compensation threshold.

References:

[29 USC 207\(e\)\(3\)\(a\)](#)  
[29 CFR 541.602\(a\)\(3\)](#)  
[84 FR 51249](#)  
[Fact Sheet 17U](#)

#### **22h04 Salary basis test.**

##### **(a) Definition.**

Being paid “on a salary basis” means that the employee:

- (1) Regularly receives each pay period
- (2) A predetermined amount of compensation
- (3) That cannot be reduced because of variations in the quality or the quantity of work performed by the employee.

The pay period may be on a weekly or less frequent basis.

References:

[29 CFR 541.602\(a\)](#)

##### **(b) Full salary required each week.**

Exempt employees must receive the full salary for every week in which they perform work, regardless of the number of days or hours worked. However, exempt employees need not be paid for a workweek in which they perform no work. If the employer makes deductions from the employee’s predetermined salary because of absences that are caused by the employer or by the business’s operating requirements, the employee is not paid on a salary basis. If an exempt employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

References:

[29 CFR 541.602\(a\)](#)  
[WHD Opinion Letter FLSA2005-1 \(Jan. 7, 2005\)](#)

#### **22h05 Deductions that do not violate the salary basis rule.**

##### **(a) List of exceptions.**

There are seven exceptions to the “no pay-docking” rule:

(1) *Personal reasons.*

An employer may deduct for each full day an employee is absent from work for personal reasons other than sickness or disability. Deductions are limited to full-day increments. If an exempt employee is absent for 1-½ days for personal reasons, the employer may deduct only for the one full-day absence.

(2) *Sickness or disability under certain circumstances.*

An employer may deduct for each full day an employee is absent from work due to sickness or disability (including work-related accidents) if the deduction is made according to a bona fide plan, policy, or practice of compensating for salary lost for these types of absences. The plan, policy, or practice may be a state disability-insurance law or state workers' compensation law. The employer does not have to pay any part of the employee's salary for full-day absences (a) for which the employee receives compensation under the plan, policy, or practice; (b) before the employee has qualified under the plan, policy, or practice; or (c) after the employee has exhausted the leave allowance under the plan, policy, or practice.

(3) *Offsets for jury duty, witness fees, and military pay.*

An employer cannot deduct from an exempt employee's salary for absences caused by jury duty, attendance as a witness or temporary military leave. However, if the employee received jury fees, witness fees, or military pay, the employer may offset those amounts against the salary due for that particular week. Military subsistence payments are pay for board, lodging, or other facilities, so an employer may not offset an employee's salary by the amount of such a payment.

(4) *Infractions of safety rules of major significance.*

An employer can make deductions for penalties imposed in good faith for infractions of safety rules of major significance, including those related to preventing serious danger in the workplace or to employees. Performance and attendance issues do not qualify.

(5) *Disciplinary suspensions under written conduct policy.*

An employer can make deductions in full-day increments for unpaid disciplinary suspensions imposed in good faith under a written workplace-conduct policy that applies to all employees. This exemption is for serious workplace misconduct, not performance or attendance issues—for example, sexual harassment, violence in the workplace, drug or alcohol violations, or violations of state or federal laws. The suspension can be for off-site conduct if the policy covers such conduct.

(6) *Initial and final weeks of employment.*

An employer may pay an hourly or daily proportional part of an exempt employee's salary for the time actually worked in the initial and final weeks of employment. However, employees are not paid on a salary basis if they are employed occasionally for a few days at a time and the employer pays them a proportional part of the weekly salary when so employed.

(7) *FMLA leave.*

When an employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the employee's salary for time actually worked.

References:

37 USC 402–403 (military subsistence)

[29 CFR 541.602\(b\)](#) (list of exceptions)

**(b) Full-day vs. partial-day deductions.**

Deductions for partial-day absences generally violate the salary basis rule. Deductions may be taken only for “one or more full days” of absence and only in full-day increments. For example, if an employee is absent for 1-½ days to handle personal affairs, the employer may deduct only one day of pay from the employee's salary. The employee must receive a full day's pay for the partial day worked to satisfy the salary basis rule. Partial-day deductions can be taken only for an employee's initial and final weeks of employment and for FMLA leave.

References:

[69 FR 22178](#)

[WHD Opinion Letter FLSA2018-7 \(Jan. 5, 2018\)](#)

**(c) Amount of deductions.**

Deductions may be made based on the hourly or daily equivalent of the employee's salary. For example, if an exempt employee is absent for personal reasons from a 9.5-hour shift, the employer may deduct the equivalent of 9.5 hours of pay. Similarly, if the employee has a five-day workweek and takes four days of personal leave, the employer may pay the employee 20% of the usual salary because the employee worked only 20% of the days.

References:

[29 CFR 541.602\(a\)–\(c\)](#)

[WHD Opinion Letter FLSA2009-14 \(Jan. 15, 2009\)](#)

[WHD Opinion Letter FLSA2018-7 \(Jan. 5, 2018\)](#)

**(d) Deductions from leave banks.**

(1) *Employees with accrued leave.*

Some employers adopt policies and plans granting employees a bank of time to use to leave for vacation, sickness, school events, or family medical needs. When an exempt employee is absent from work, even for less than a full day, those employers may deduct from the employee's leave bank the amount of time the employee was absent from work. These deductions do not violate the salary basis rule as long as the employee receives the full amount of guaranteed salary.

- (2) *Employees without, or with insufficient, accrued leave.*

Exempt employees who have no accrued leave and are absent for less than a full day must be paid their full guaranteed salary. If the employee's accrued leave is insufficient to cover an entire day's absence, the employer may deduct the accrued time from the employee's leave bank and pay the employee the balance of the daily equivalent salary. For example, an exempt employee with four hours of accrued leave has a salary of \$1,000 per week. If the employee misses a full eight-hour day of work, the employer complies with the salary basis rule if it deducts those four hours from the employee's leave bank and pays the employee \$100 for that day—the equivalent of one half of one day's salary.

References:

[29 CFR 541.602](#)  
[WHD Opinion Letter FLSA2004-5 \(June 25, 2004\)](#)  
[WHD Opinion Letter FLSA2005-7 \(Jan. 7, 2005\)](#)  
[WHD Opinion Letter FLSA2007-6 \(Feb. 8, 2007\)](#)  
[WHD Opinion Letter FLSA2009-18 \(Jan. 16, 2009\)](#)  
[WHD Opinion Letter FLSA2018-7 \(Jan. 5, 2018\)](#)

**(e) Examples.**

- (1) *Inclement weather.*

A deduction when an employee is absent for a full day due to inclement weather is a permissible deduction for a personal absence if the employer is open for business.

- (2) *Safety rules of major significance.*

These rules include subjects such as prohibiting smoking in explosive plants, oil refineries, and coal mines. Industrial-security regulations required by a government agency are considered such rules. Rules concerning matters such as patient well-being or abuse or neglect of a patient are not.

References:

[WHD Opinion Letter FLSA-802 \(Nov. 27, 1963\)](#)  
[WHD Non-Administrator Opinion Letter FLSA \(Mar. 29, 1991\)](#)  
[WHD Non-Administrator Opinion Letter FLSA \(Oct. 29, 1998\)](#)

- (3) *Shortages, damages, and loss of equipment.*

Deductions for cash-register shortages, equipment damage, or loss of equipment are impermissible as they do not fall under one of the seven listed permissible categories.

References:

[WHD Opinion Letter FLSA2006-7 \(Mar. 10, 2006\)](#)

- (4) *Fines, settlements, and judgments.*

Employers occasionally incur fines or pay settlements or judgments that could arguably be blamed on an exempt employee. The employer may not deduct those amounts from the employee's salary as they do not fall under one of the seven listed permissible categories.

References:

[69 FR 22177–22178](#)

- (5) *Working fewer hours than required.*

Deductions for working fewer hours than required or expected are impermissible. This is the case even if the absence is at the employer's direction or is the result of a suspension (for something other than violating a workplace-misconduct rule).

References:

[WHD Opinion Letter FLSA2005-01 \(Jan. 7, 2005\)](#)

- (6) *Lawyers, physicians, teachers, and outside sales employees.*

The prohibition against salary deductions does not apply to employees who are not subject to the salary basis requirement. Employers may therefore dock the pay of those exempt employees for partial-day absences without losing the exemption.

References:

[WHD Opinion Letter FLSA2005-16 \(Apr. 11, 2005\)](#)

[WHD Opinion Letter FLSA2005-34 \(Sept. 23, 2005\)](#)

## **22h06 Effect of improper deductions from salary.**

### **(a) Fair reading of improper-deduction rules.**

As with all rules regarding the exemption, WHD reads the improper-deduction rules fairly, not narrowly. The improper-deduction rules themselves prohibit unduly technical readings meant to defeat a Part 541 exemption.

References:

[29 CFR 541.603\(e\)](#)

Encino Motorcars, LLC, v. Navarro, 138 S.Ct. 1134 (2018)

### **(b) Loss of exemption.**

An employer loses an exemption if it did not intend to pay employees on a salary basis. An employer demonstrates this intent through an actual practice of making improper deductions. Whether improper deductions are an actual practice depends on factors including:

- (1) The number of improper deductions, particularly as compared to the number of employee infractions warranting discipline;

- (2) The time period during which the employer made improper deductions;
- (3) The number and geographic locations of employees whose salary was improperly reduced;
- (4) The number and geographic locations of managers responsible for making the improper deductions; and
- (5) Whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

References:

[29 CFR 541.603\(a\)](#)

**(c) Duration and breadth of lost exemptions.**

An employer that has an actual practice of making improper deductions loses the exemption for certain employees over a certain time period:

- (1) The employees who received improper deductions become nonexempt. So do employees who (a) have the same job classification as those employees and (b) work for the managers responsible for the improper deductions. Employees in different job classifications or who work for different managers do not lose their exempt status.
- (2) The exemption is lost for the time period in which the improper deductions were made.

For example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, the employer loses the exemption for all engineers at that facility whose pay could have been improperly docked by that manager. Engineers who work for other managers remain exempt, as do non-engineer employees at the facility.

References:

[29 CFR 541.603\(b\)](#)

**(d) Remediating improper deductions.**

If improper deductions are isolated or inadvertent, an employer does not lose the exemption if it reimburses the employees for the improper deductions. Inadvertent deductions are those taken unintentionally, for example, as a result of a clerical or time-keeping error. Whether deductions are isolated depends on the same factors that determine whether improper deductions are an actual practice.

References:

[29 CFR 541.603\(c\)](#)

[69 FR 22181](#)

**(e) Safe harbor for employers that adopt an appropriate policy.**

(1) *Appropriate policy.*

An employer will not lose an exemption due to improper deductions if it:

- a. Has a clearly communicated policy that prohibits improper deductions,
- b. Has as part of that policy a mechanism for complaining about improper deductions,
- c. Reimburses employees for improper deductions, and
- d. Makes a good-faith commitment to comply with the salary basis rule in the future.

(2) *Loss of exemption due to violation of policy.*

The employer will lose the exemption if it does not reimburse employees for improper deductions or continues to make improper deductions after receiving employee complaints. In that case, it will lose the exemption in the same manner as if it had not adopted the policy.

(3) *“Clearly communicated.”*

Examples of the ways a policy can be clearly communicated are giving a copy of the policy to employees when they are hired, publishing it in an employee handbook, and distributing it to employees over the employer’s intranet. Although a written policy is the best evidence, it is not necessary as long as the policy was clearly communicated to employees before an impermissible deduction was made.

(4) *Good-faith commitment.*

Examples of ways an employer could show a good-faith commitment to complying with the salary basis rule are re-publishing the improper-deduction policy to employees; posting a notice including such a commitment on an employee bulletin board or the employer’s intranet; training managers and supervisors on the policy and the employer’s commitment; reprimanding or training the offending manager; and establishing a telephone number for employees to file complaints concerning improper deductions.

(5) *Safe harbor available regardless of reason for improper deduction.*

The safe harbor is available regardless of the reason for the improper deduction. For example, an employer with a clearly communicated policy prohibiting improper deductions may have a manager who engages in an actual practice (neither isolated nor inadvertent) of making improper deductions. Regardless of the reasons for the deductions, the employer would not lose the exemption if its policy includes a complaint mechanism, and, after receiving and investigating an employee complaint, it reimburses the employees for the improper deductions and makes a good-faith commitment to comply in the future.

(6) *Reasonable time for employer to investigate complaint.*



An employer has a reasonable amount of time to investigate and, if necessary, correct an employee's complaint of improper deductions. The amount of time depends upon the circumstances, but an employer should begin its investigation promptly. The employer's receiving other employee complaints before it completes the investigation does not, by itself, defeat the safe harbor.

References:

[29 CFR 541.603\(d\)](#)  
[69 FR 22181–22183](#)

**22h07 Exempt and nonexempt employees may work in the same capacity.**

Exemptions depend upon an employee's pay and job duties, not the exemption status of other employees. That is, an employer need not claim the exemption for every employee who qualifies as exempt; one employee's status as a salaried, exempt employee is not affected by another employee's status as an hourly, nonexempt employee, even if the employees share the same job duties. For example, a hospital that assigns identical duties to all of its registered nurses may employ some of the nurses on an hourly, nonexempt basis and others on a salaried, exempt basis. As long as the salaried nurses' duties qualify them as exempt, the fact that other nurses with the same duties are paid on a different basis does not cause them to lose their exempt status.

References:

[WHD Opinion Letter FLSA2005-20 \(Aug. 19, 2005\)](#)

**22h08 Minimum guarantee plus extras.**

- (a) Exempt employees who are guaranteed at least the standard salary level may receive compensation beyond their guaranteed salary without violating the salary basis requirement. Thus, for example, such an employee may also receive as additional compensation a commission on sales or a percentage of sales or profits. Similarly, the exemption is not lost if such an employee receives additional compensation based on hours worked beyond the normal workweek. This additional compensation may be paid on any basis (*e.g.*, flat sum, bonus payment, straight-time hourly amount, time and one-half, or any other basis) and may include paid time off.

References:

[29 CFR 541.604](#)  
[WHD Opinion Letter FLSA2005-20 \(Aug. 19, 2005\)](#)  
[WHD Opinion Letter FLSA2006-43 \(Nov. 27, 2006\)](#)

- (b) The prohibition against deductions from the guaranteed salary does not extend to this additional compensation as long as the additional compensation is bona fide and not paid to facilitate otherwise improper deductions. For example, deductions for cash shortages may be made from a salaried exempt employee's bona fide commission payments without affecting the employee's exempt status.

References:

**22h09**      **Computation of salary on an hourly, daily, or shift basis.**

- (a) An employer may calculate an exempt employee's earnings on an hourly, daily, or shift basis if:
- (1) The employee is guaranteed to be paid, regardless of the number of hours, days, or shifts worked, at least the standard salary level on a salary basis; and
  - (2) There is a reasonable relationship between the guaranteed amount and the amount actually earned.
- (b) There is a reasonable relationship between the two amounts if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned rate for the employee's normal scheduled workweek. For example, if exempt employees who normally work four or five shifts each week are guaranteed at least \$725 for any week in which they perform work, they may be paid \$210 per shift without violating the salary basis requirement. (The employees must receive the full \$725 for workweeks in which they work fewer than four shifts).
- (c) The reasonable-relationship requirement applies only when the employee's pay is computed on an hourly, daily, or shift basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary who also receives a commission of one-half percent of store sales or five percent of the store's profits, which in some weeks may even exceed the guaranteed salary.
- (d) Average weekly earnings over the course of a year is a reasonable method of calculating an employee's usual earnings. A year ordinarily encompasses sufficient variations in an employee's earnings and hours to calculate what is "usual."
- (e) A 1.5-to-1 ratio of actual earnings to guaranteed weekly salary is a "reasonable relationship."

References:

[29 CFR 541.602](#)

[29 CFR 541.604\(b\)](#)

[WHD Opinion Letter FLSA2018-25 \(Nov. 8, 2018\)](#)

**22h10**      **Fee basis.**

- (a) Administrative, professional, and computer employees may be paid on a fee basis. A fee-basis payment is an agreed sum for completing a single job regardless of the time required to complete the work. These payments resemble piecework payments with an important distinction: Piecework payments are for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. A fee payment, on the other hand, is generally paid for jobs that are unique. Payments based on the number of hours or days worked and not on the accomplishment of a single task are not payments on a fee basis.

- (b) To be eligible for fee-basis payments, the character or nature of the job itself must be truly unique. It is not enough that performing the job may vary from day to day; the outcome of the work must be original in character.
- (c) Fee payments satisfy the standard salary level if the per-job fee multiplied by the time worked to complete the job would yield at least the standard salary level per week if the employee worked 40 hours. For example, an artist paid \$350 for a picture that took 20 hours to complete meets the minimum \$684 requirement for exemption because working 40 hours at that rate would yield the artist \$700.
- (d) Examples of non-fee-basis payments are payments based on:
  - (1) An amount per transaction or per line, which are more properly viewed as piece rate payments;
  - (2) A percentage of hourly amounts billed or charged to a client;
  - (3) The number of hours or days worked;
  - (4) The number of tests reviewed and evaluated by a healthcare provider; and
  - (5) The number of patient visits made by a healthcare provider.

References:

[29 CFR 541.605](#)

[WHD Opinion Letter WHD-514 \(Apr. 15, 1982\)](#)

[WHD Opinion Letter FLSA2005-24 \(Aug. 26, 2005\)](#)

[WHD Non-Administrator Opinion Letter FLSA \(Nov. 9, 1998\)](#)

#### **22h11 Board, lodging, or other facilities.**

- (a) The salary payment must be “exclusive of board, lodging, or other facilities” to satisfy the salary level test. That is, all payments made to satisfy the standard salary level or the highly compensated employee annual threshold must be free and clear or independent of credit claimed for non-cash items of value furnished by an employer. An employer-employee agreement may require the employer to furnish board, lodging, or other facilities to the employee, but the cost of those items cannot count towards the standard salary level.
- (b) “Other facilities” refers to items similar to board and lodging. Examples include meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to student employees; merchandise furnished at company stores or commissaries, including food, clothing, and household effects; housing furnished for employees’ dwelling; and transportation furnished to employees for ordinary commuting between their homes and work.

References:

[29 CFR 531.32](#)

[29 CFR 541.606](#)

## 22h12 Practices that do not violate the salary level and salary basis tests.

### (a) **Salary earned in a shorter period but paid over a year.**

An employer may prorate the salary of an otherwise-exempt employee who has a duty period of less than a full year. For example, a school employs a nurse on a 10-month basis and pays her at the 10-month equivalent of the standard salary level. The school may spread the nurse's salary payments over 12 months rather than 10 even though each individual payment would be less than the standard salary level. The prorated payments comply with the salary basis test because they are predetermined, periodically paid amounts that do not vary based on quantity or quality of work and the nurse receives the full amount of salary for each week worked. They comply with the salary level test because, while the timing of the payments is different, the employee is paid the standard salary level per week of work. The employer and employee may determine by contract when the employee's salary payments are to be made; that timing is not part of the FLSA or Part 541 regulations.

References:

*Walling v. A.H. Belo Corp.*, 316 U.S. 624, 634–635 (1942)  
[29 CFR 541.602\(a\)](#)  
[WHD Opinion Letter FLSA \(December 27, 1967\)](#)

### (b) **Salary reduction as a result of reduced workweek.**

An employer may prospectively reduce an exempt employee's predetermined salary or workweek if it is a bona fide reduction in salary and not an attempt to evade the salary basis requirement. Changes in an exempt employee's salary or workweek are bona fide if they reflect long-term business needs rather than short-term fluctuations in the employer's business. For example, as long as the employee's salary remains at least the standard salary level, an employer could reduce an exempt employee's salary by 20% if it reduces the employee from a five-day to a four-day workweek.

References:

[WHD Opinion Letter FLSA2004-5 \(June 25, 2004\)](#)  
[Fact Sheet 70](#)

### (c) **Requiring exempt employees to make up missed time.**

The number of hours worked by an exempt employee is determined by the employment agreement, whether formal or informal. Thus, while an employer cannot dock an exempt employee's pay for personal absences of less than a day, it can require that employee to make up work time lost due to those absences. Such a requirement to make up time is a time-and-attendance matter, not a workplace-conduct rule for which an employer may impose a disciplinary suspension.

References:

[WHD Opinion Letter FLSA2006-6 \(Mar. 10, 2006\)](#)  
[FOH 22h09](#)

**(d) Deductions from leave banks.**

The FLSA does not require employers to offer leave or vacation time. An employer that does offer such time can require that employees use it on specific days, thus reducing time available in a leave bank. An employer can, for example, deduct from an employee's leave bank on days when the employer's site is closed due to poor weather, the employer's plant is temporarily shut down, or staffing levels need to be temporarily reduced. The employee must still be paid the guaranteed amount of salary.

References:

[WHD Opinion Letter FLSA2005-41 \(Oct. 24, 2005\)](#)

[WHD Opinion Letter FLSA2005-46 \(Oct. 28, 2005\)](#)

[WHD Opinion Letter FLSA2009-2 \(Jan. 14, 2009\)](#)

**(e) Deductions to offset compensation from bona fide sick or disability-insurance benefits plans.**

- (1) An employer that complies with a bona-fide disability-insurance benefit plan, including a state disability-insurance or worker's-compensation law, complies with the salary basis requirement. This is true even if the employee receives no pay for some period during an illness or the disability-leave pay is less than the employee's predetermined salary. For example, an employer's short-term disability-insurance plan replaces an employee's salary for 12 weeks beginning on the fourth day of absence. The employer may deduct from the employee's pay for the three days before the employee qualifies for benefits; for the twelve weeks the employee's salary is replaced by the benefits; and for absences after the employee has exhausted the benefits.
- (2) There is no bright-line test for how many days of leave a plan must allow or how long a waiting period it may require to be considered a bona-fide plan. WHD has deemed as bona fide plans that allow for at least 6 days of sick leave per year and a plan that required a year of service before eligibility for sick-pay benefits.

References:

[29 CFR 541.602\(b\)\(2\)](#)

[WHD Non-Administrator Opinion Letter FLSA \(August 15, 1972\)](#)

[WHD Opinion Letter FLSA2006-32 \(Sept. 14, 2006\)](#)

**(f) Salary during periods of partial disability.**

A disability plan that pays employees a fixed, reduced salary while the employee is disabled or rehabilitating maintains the exemption as long as the reduced salary is at least the standard salary level. If employees are temporarily unable to perform their regular exempt duties, the employer may convert them to nonexempt status. This does not affect the exempt status of similarly situated employees. However, compensation that fluctuates based on the number of hours an employee works, even if paid according to a disability plan, is likely not compensation on a salary basis because it is unlikely to satisfy the reasonable-relationship test.

References:

[WHD Opinion Letter FLSA2004-5 \(June 25, 2004\)](#)

**22h13 Special rules for public-agency employees.**

- (a) A public agency may reduce an employee's pay or place the employee on unpaid leave for certain absences, even if the absence is for less than one work day. The agency may do so if:
- (1) The agency's pay system is established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability;
  - (2) The employee accrues personal leave and sick leave under the system;
  - (3) The system requires that the employee's pay be reduced or the employee be placed on unpaid leave; and
  - (4) The employee is not using accrued leave because:
    - a. The employee did not seek, or was denied, permission to use accrued leave;
    - b. The employee's accrued leave was exhausted; or
    - c. The employee chose to use unpaid leave.
- (b) Deductions for absences caused by a budget-required furlough may violate the salary tests, but only in workweeks in which the furlough occurs and for which the employee's salary is accordingly reduced.

References:

[29 CFR 541.710](#)  
[57 FR 37674-37675](#)

**22h14 Foreign national paid in foreign currency.**

Employers may pay foreign nationals temporarily residing in the U.S. some or all of their salary in foreign currency. The total of the dollar payment and the dollar value of the foreign-currency payment must equal at least the standard salary level. To calculate the dollar value of the foreign-currency payment, use the exchange rate (1) in effect at the time the wages are paid to the employee (2) that is available to an individual in the area where the employee works.

References:

[WHD Opinion Letter FLSA2006-17 \(May 23, 2006\)](#)

**22i SPECIAL CONSIDERATIONS**

**22i00 Use of manuals or software.**

- (a) Using manuals, guidelines, and other established procedures does not by itself disqualify an employee from exemption. Using references that contain or relate to 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 to help address difficult or novel circumstances is exempt work. Taking well-established techniques or procedures described in manuals or other sources, on the other hand, and applying them within closely prescribed limits to determine the correct response to an inquiry or set of circumstances is nonexempt work.
- (b) By itself, employees' use of a software program to enhance their ability to evaluate products, options and variables to serve the customer does not render them non-exempt.

References:

[29 CFR 541.704](#)

[WHD Opinion Letter FLSA2006-43 \( Nov. 27, 2006\)](#)

#### **22i01 Emergencies.**

- (a) Exempt employees who perform nonexempt work because of an emergency remain exempt. If an emergency threatens employee safety, to cease operations, or serious damage to the employer's property, work that tries to prevent those results is exempt. Emergencies arising out of an employer's business and affecting the public health or welfare can qualify under this provision.
- (b) "Emergency" does not include events within the employer's control or for which the employer can reasonably account in the normal course of business. Emergencies generally occur only rarely and are events that the employer cannot reasonably anticipate.
- (c) Examples:
  - (1) A superintendent who pitches in after a mine explosion and digs out trapped workers is still a bona fide executive.
  - (2) Assisting nonexempt employees with their work during periods of heavy workload or to handle rush orders is not exempt emergency work.
  - (3) Replacing a nonexempt employee during the first day or partial day of an illness may be considered exempt emergency work depending on factors such as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the employee immediately, and the feasibility of filling the employee's place promptly.
  - (4) Regular repair and cleaning of equipment is not emergency work, even when necessary to prevent fire or explosion. Repairing equipment may be emergency work if the breakdown or damage was caused by accident or carelessness that the employer could not reasonably anticipate.

This list is not exhaustive, and situations must be evaluated case by case. However, an employer calls an employee's exempt status into question if it routinely assigns the employee nonexempt work for its own convenience.

References:

[29 CFR 541.706](#)

[69 FR 22189](#)

[WHD Opinion Letter FLSA2006-29 \(Sept. 8, 2006\)](#)

**22i02 Occasional tasks.**

Occasional, infrequently recurring tasks that cannot practicably be performed by nonexempt employees, but are the means for an exempt employee to carry out exempt functions and responsibilities, are exempt work. The work's exempt status depends on factors including whether:

- (a) The employee's subordinates perform the same work,
- (b) It is practical to delegate the work to a nonexempt employee,
- (c) The exempt employee performs the task frequently or occasionally, and
- (d) There is an industry practice for the exempt employee to perform the task.

References:

[29 CFR 541.707](#)

**22i03 (Reserved.)**

**22i04 Special rule for motion-picture producing industry.**

- (a) The salary basis requirement does not apply to otherwise-exempt employees in the motion-picture producing industry under these circumstances:
  - (1) For employees compensated at a weekly rate:
    - a. The employee is compensated at no less than the minimum weekly amount per week and
    - b. The employee is paid a proportionate amount, based on a workweek of no more than six days, for any week in which the employee, for any reason, does not work a full workweek.
  - (2) For employees compensated at a daily rate:
    - a. The employee's job category has no weekly base rate, but the daily base rate would yield at least the minimum weekly amount if the employee worked six days; or
    - b. The employee's job category has a weekly base rate of at least the minimum weekly amount, and the daily base rate is at least one-sixth of the weekly base rate.



- (b) The “minimum weekly amount” is \$1,043 per week (\$695 per week, for periods before 2020), exclusive of board, lodging, or other facilities. The daily equivalent is \$173.83 (\$115.83, for periods before 2020).
- (c) This special exception also extends to similarly-employed employees of producers of television films and videotapes.

References:

[29 CFR 541.709](#)  
[69 FR 22190](#)

## 22j **EXAMPLES IN SPECIFIC OCCUPATIONS**

### 22j00 **General.**

These are examples of how Part 541 applies to some occupations. Employees in the occupations discussed below are not categorically exempt; whether a particular employee is exempt always depends on the facts surrounding that employee. Accordingly, these examples use language such as “generally” to emphasize that job titles do not determine whether an employee is exempt; exemptions depend on the particular employee’s particular pay and particular duties. Examples taken from the regulations cannot incorporate all possible facts. Examples taken from WHD opinion letters respond to fact-specific inquiries, so check the opinion letter itself to see whether it is based on facts similar to a particular case.

References:

[29 CFR 541.2](#)

### 22j01 **Academic advisors and intervention specialists.**

Academic advisors employed in educational establishments who perform duties such as assisting students with class selection, educational goals, and graduation requirements; orienting students regarding admissions, policies, procedures, resources, and programs; and assisting students with overcoming academic difficulties or disabilities generally meet the duties test for exempt academic administrative employees.

References:

[29 CFR 541.204](#)  
[WHD Opinion Letter FLSA2005-42 \(Oct. 24, 2005\)](#)

### 22j02 **Accountants.**

Certified public accountants generally meet the duties test for exempt learned professionals. Accountants who perform similar job duties but are not certified public accountants may qualify as exempt learned professionals. Accounting clerks, bookkeepers, and other employees who normally perform a great deal of routine work are generally not exempt professionals.

References:

[29 CFR 541.301\(e\)\(5\)](#)

**22j03**     **Admissions counselors.**

Enrollment or admissions counselors whose primary duty is to engage in general outreach and recruitment efforts to encourage students to apply to an educational institution are not exempt under the academic administrative exemption. Their duties are not sufficiently related to the educational institution's academic operations.

References:

[WHD Non-Administrator Opinion Letter FLSA \(April 20, 1999\)](#)

**22j04**     **Advertising graphic art: installers.**

Persons employed to install adhesive graphic wraps on vehicles or other surfaces are not exempt creative professionals. They are skilled employees who install an artistic product created by someone else.

References:

[WHD Opinion Letter FLSA2005-26 \(Aug. 26, 2005\)](#)

**22j05**     **Athletic instructors or coaches.**

Assistant athletic instructors or coaches at educational institutions who spend more than 50 percent of their time teaching in an educational establishment generally qualify as exempt teaching professionals. These employees often work under the supervision of a head coach. Teaching duties of these positions include teaching proper skills to student-athletes; designing instructions for individual student-athletes and for specific team needs; and instruction in physical health, team concepts, and safety. Non-teaching duties of these positions typically include recruiting and developing recruiting strategies.

References:

[WHD Opinion Letter FLSA2008-11 \(Dec. 1, 2008\)](#)

**22j06**     **Athletic trainers.**

Certified athletic trainers who have successfully completed four years of pre-professional and professional study in a specialized, accredited curriculum generally meet the duties test for exempt learned professionals.

References:

[29 CFR 541.301\(e\)\(8\)](#)

**22j07**     **Chefs.**

- (a) Chefs, such as executive chefs and sous chefs, with a four-year academic degree in a culinary arts program generally meet the duties test for exempt learned professionals. Ordinary cooks do not.

- (b) Chefs may satisfy the duties test for creative professionals if their work requires invention, imagination, originality, or talent, such as that involved in regularly creating or designing unique dishes and menu items. However, there is a wide variation in duties among chefs, and the creative professional exemption must be applied on a case-by-case basis with particular focus on the creative duties and abilities of the specific chef in question. The creative professional exemption should extend only to truly original chefs, such as those who work at five-star or gourmet establishments, whose primary duty is to perform work “requiring invention, imagination, originality or talent.”

References:

[29 CFR 541.301\(e\)\(6\)](#)  
[69 FR 22154](#)

**22j08**      **Construction and project superintendents.**

Construction and project superintendents who have management duties, regularly supervise two or more of their employer’s full-time employees, and who possess the necessary authority over others’ employment status may meet the duties test for exempt executives. Management, in this context, includes duties such as supervising the labor force, meeting with client representatives, making decisions about subcontractors’ scope of work, and making purchasing decisions.

References:

[WHD Opinion Letter FLSA2007-3 \(Jan. 25, 2007\)](#)  
[WHD Opinion Letter FLSA2018-10 \(Jan. 5, 2018\)](#)  
[29 CFR 541.100](#)

**22j09**      **Consultants.**

Management consultants who study the operations of a business and propose changes in organization are generally performing exempt administrative duties.

References:

[29 CFR 541.203\(e\)](#)

**22j10**      **Copy editors.**

Copyediting involves the use of skill rather than the exercise of discretion and independent judgment. If the employer is in the business of producing or publishing media, a copy editor is involved in producing the employer’s goods or services and is not an exempt administrative employee.

References:

[69 FR 22141](#)  
[WHD Opinion Letter FLSA2006-45 \(Dec. 21, 2006\)](#)

**22j11**      **Court reporters.**

Court reporters are generally not exempt. Court reporting does not require specialized academic instruction to enter into the field. Court reporters do not exercise the requisite discretion and independent judgment to qualify for the administrative exemption and do not generally have a primary duty of supervising other employees.

References:

[WHD Non-Administrator Opinion Letter 2007-2NA \(Aug. 23, 2007\)](#)

22j12

**Dental hygienists.**

Dental hygienists who have successfully completed four academic years of pre-professional and professional study in an accredited college or university generally meet the duties test for exempt learned professionals.

References:

[29 CFR 541.301\(e\)\(3\)](#)

22j13

**Employment-placement personnel.**

Employees of a temporary-placement service generally perform exempt administrative work when their duties include work similar to exempt human-resources responsibilities, such as interviewing and recommending candidates for hiring; resolving pay and benefit issues; resolving conflicts between clients and placed personnel; counseling placed and eligible-for-placement personnel; negotiating payment structures with clients; and examining clients' and competitors' capacities, pay, and billing rates.

References:

[WHD Opinion Letter FLSA2018-12 \(Jan. 5, 2018\)](#)

22j14

**Examiners or graders.**

Examiners or graders, such as employees that grade lumber, generally do not perform exempt administrative duties. Their work involves comparing products with established, usually catalogued, standards.

References:

[29 CFR 541.203\(h\)](#)

22j15

**Executive or administrative assistants.**

Executive or administrative assistants to business owners or senior executives generally perform exempt administrative duties if they, without specific instructions or prescribed procedures, have been delegated authority regarding matters of significance. This does not extend to secretaries or other clerical employees.

References:

[29 CFR 541.203\(d\)](#)

**22j16**      **Financial-services industry.**

**(a)**      **Generally.**

Financial-services employees generally perform exempt administrative work if their duties include, for example, collecting and analyzing information regarding the customer's income, assets, investments or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing, or promoting the employer's financial products. Courts have found employees who represent the employer with the public, negotiate on behalf of the company, and engage in sales promotion to be within the administrative exemption, even though the employees also engaged in some inside sales activities. However, the administrative exemption is not available for employees whose primary duty is to sell the employer's financial products on a day-to-day basis directly to consumers or who do not exercise discretion and independent judgment with respect to significant matters.

**(b)**      **Registered representatives.**

Registered representatives may be exempt administrative employees. They frequently carry titles such as account executive, broker-representative, financial executive, financial consultant, financial advisor, investment professional, or stockbroker. Their exempt administrative work generally includes furnishing investment advice to clients based on an analysis of the clients' financial information, possible investment options, and clients' particular circumstances, and maintaining licenses to deal in securities from an organizations that is regulated by the SEC. If these or similar exempt tasks, rather than selling securities or financial products, are the employee's primary duty, the employee generally satisfies the primary duty test.

**(c)**      **Mortgage-loan officers.**

The exemption status of mortgage-loan officers (and those with similar job titles) depends heavily on the particular employee's duties. Many such employees have as their primary duty making sales of mortgage products to customers and are non-exempt. Others have primary duties such as investigating potential borrowers and deciding whether to extend credit or waive or modify credit requirements and are performing exempt administrative duties. Others have a primary duty of sales but customarily and regularly perform that duty away from the employer's place of business and are thus exempt outside-sales employees.

References:

[29 CFR 541.203\(b\)](#)

[29 CFR 541.703\(b\)\(7\)](#)

[69 FR 22146](#)

[Administrator's Interpretation No. 2010-1](#)

[WHD Opinion Letter FLSA2006-11 \(Mar. 31, 2006\)](#)

[WHD Opinion Letter FLSA2006-43 \(Nov. 27, 2006\)](#)

**22j17**      **Floral designers.**

Floral designers who are given a subject matter, theme, or occasion for which a floral design or arrangement is needed and create the floral design or floral means for communicating an appropriate idea generally meet the duties test for exempt creative professionals. Employees whose duties consist of copying standard designs or ideas, such as those found in catalogs, do not.

References:

[WHD Opinion Letter FLSA \(Sept. 4, 1970\)](#)

**22j18 Funeral directors and embalmers.**

Funeral directors or embalmers generally perform exempt learned-professional duties if they are licensed by and work in a state that requires graduation from an accredited four-year pre-professional or professional academic program. Others with those titles who lack the requisite license or education are not exempt.

References:

[29 CFR 541.301\(e\)\(9\)](#)

[69 FR 22155–22156](#)

**22j19 Information technology support specialists (help desk support specialist).**

An information technology support specialist (or help desk support specialist) is generally nonexempt. Generally, these employees use skill in applying well-established techniques, procedures, or specific standards described in manuals or other sources. The occupation does not require advanced academic study, does not concern significant matters in the management or general business operations of the employer, and does not involve the analysis-and-design duties required for a computer-employee exemption.

References:

[WHD Opinion Letter FLSA2006-42 \(Oct. 26, 2006\)](#)

**22j20 Inspectors (general).**

Ordinary inspection work is generally not exempt administrative work. Inspectors normally rely on techniques and skills acquired by special training or experience to perform specialized work along standardized lines involving well-established techniques and procedures which may have been catalogued and described in manuals or other sources. They have some leeway in the performance of their work but only within closely prescribed limits. Inspectors whose primary duty is management of an area, including supervising two or more subordinates, may qualify for the executive exemption.

References:

[29 CFR 541.203\(g\)](#)

[WHD Opinion Letter FLSA2007-11 \(Sept. 17, 2007\)](#)

**22j21 Inspectors (public sector).**

Public-sector inspectors or investigators of various types, such as police officers, criminal investigators, liquor-law investigators, probation officers, parole agents, fire-prevention or safety inspectors, building or construction inspectors, health or sanitation inspectors, environmental or soils specialists, and similar employees are generally non-exempt. Their primary duty is typically to perform the services that their agency exists to perform. For example, in law-enforcement organizations, investigation activities are among the primary, day-to-day functions of the business. Further, their work typically involves using skills and technical abilities to gather factual information, apply known standards or prescribed procedures, determine which procedure to follow, and determine whether prescribed standards or criteria are met. Thus, they typically do not exercise the discretion or independent judgment with respect to matters of significance to the management or general business operations that is necessary to qualify as exempt administrative employees.

References:

[29 CFR 541.3\(b\)\(1\), 541.203\(j\)](#)  
[WHD Opinion Letter FLSA2005-21 \(Aug. 19, 2005\)](#)  
[WHD Opinion Letter FLSA-1165 \(July 26, 1988\)](#)  
[WHD Opinion Letter FLSA \(September 12, 1997\)](#)

**22j22**     **Insurance claims adjusters.**

- (a) Insurance claims adjusters generally perform exempt administrative work, whether employed by an insurance company or not, if their duties include activities such as interviewing insureds, witnesses, and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation. These duties are directly related to management or general business operations of the employer or the employer's customers in the functional area of insurance.
- (b) Whether an adjuster is an exempt administrative professional generally depends upon the level of judgment and discretion the adjuster is authorized to exercise. One indicator is the amount of supervision. For example, does the claims adjuster's supervisor only spot-check work, or must the adjuster seek approval from a supervisor for settlements? Claims adjusters who perform their duties under close supervision or in consultation with supervisors and who have no, or limited authority, to make independent choices do not exercise sufficient judgment and discretion.
- (c) The exercise of discretion and independent judgment must be more than applying specific standards or procedures found in manuals. Adjusters exercising this elevated level of judgment perform duties including evaluating independent medical examinations; evaluating investigations of accident scenes; hiring and interacting with nursing services to assist claimants to return to work; approving litigation strategy; participating in hiring experts; serving as lead negotiator in settlement discussions; and using their own judgment about what the facts show, who is liable, what a claim is worth, and how to handle negotiations with the claimant.

References:

[29 CFR 541.203\(a\)](#)

[WHD Opinion Letter FLSA2005-2 \(Jan. 7, 2005\)](#)  
[WHD Opinion Letter FLSA2005-25 \(Aug. 26, 2005\)](#)

**22j23 Intervention specialists.**

Intervention specialists at academic institutions who teach life-skills courses and perform duties similar to those of academic advisors generally meet the duties test for the academic administrative exemption.

References:

[WHD Opinion Letter FLSA2005-42 \(Oct. 24, 2005\)](#)

**22j24 Investigators (private and contracted).**

Investigatory work is generally not directly related to management or general business operations and is thus not exempt administrative work. Investigators' activities are more related to the ongoing, day-to-day furnishing of their employer's product, investigative services. Investigators' discretion regarding their own workloads and whether to pursue particular leads do not satisfy the "discretion and independent judgment" prong of the administrative primary duty test.

References:

[WHD Opinion Letter FLSA2005-21 \(Aug. 19, 2005\)](#)

**22j25 Journalists.**

- (a) Journalists may satisfy the primary duty test for the creative professional exemption if their work requires invention, imagination, originality, or talent, as opposed to work that depends primarily on intelligence, diligence, and accuracy.
- (b) 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 unique interpretations or analyses to a news product. Reporters who merely re-write press releases or who write standard recounts of public information by gathering facts on routine community events are not exempt creative professionals. Reporters whose work is subject to substantial control by their employer are not exempt creative professionals.
- (c) Journalists may qualify as exempt creative professionals if their primary duty is performing in radio, television or other electronic media; conducting investigative interviews; analyzing or interpreting public events; writing editorials, opinion columns, or other commentary; or acting as a narrator or commentator.

References:

[29 CFR 541.302\(d\)](#)  
[Fact Sheet 17Q](#)

**22j26 Location managers in the motion picture industry.**



Location managers generally meet the duties test for exempt administrative employees. Among their typical duties are choosing filming locations with approval from the director and production management, negotiating site rentals, contracting for utilities, applying for governmental services and permits, creating and enforcing rules specific to the filming locations based on the sites' specific characteristics, liaising between the production company and property owners and residents, and negotiating claims of property damage. These duties directly relate to the general business operations of budgeting, procurement, and personnel management and include the exercise of discretion and independent judgment.

References:

[WHD Opinion Letter FLSA2006-46 \(Dec. 21, 2006\)](#)

**22j27 Managers: Community events, conventions, visitor services.**

Municipal employees in these roles generally meet the duties test for exempt administrative employees. Their duties, which can include, among other things, planning and coordinating events, marketing and promotional work, hiring and training staff, and preparing and presenting bids for meetings and conferences, typically relate to the general business operations of their municipal departments and are likely to involve the exercise of discretion and independent judgment in matters of significance to those departments and the municipalities, particularly when the employees operate under minimal supervision, have the authority to carry out major assignments, bind the municipality to contracts, or promote the municipality to encourage economic growth.

References:

[WHD Opinion Letter FLSA2006-34 \(Sept. 21, 2006\)](#)

[WHD Opinion Letter FLSA2009-04 \(Jan. 14, 2009\)](#)

**22j28 Managers: Gasoline service station.**

Station managers with sole charge of a location who customarily and regularly direct the work of two or more other full-time employees generally meet the duties test for exempt executives. Duties such as printing daily sales reports, checking inventory statuses, auditing cash receipts, and delivering cash receipts to the bank relate to the executive duties of maintaining production and sales records and securing the employer's property. In contrast, working as a station attendant is non-exempt work that cannot be routinely assigned to an employee without calling that employee's exemption status into question. However, as long as an otherwise exempt station manager performs attendant duties only occasionally—WHD has opined that up to a full day, a few times per year, at infrequent intervals, qualifies as "occasionally"—the employee is exempt.

References:

[WHD Opinion Letter FLSA2006-29 \(Sept. 8, 2006\)](#)

**22j29 Managers: Human resources or personnel.**

Human resources managers who formulate, interpret, or implement employment policies generally meet the duties test for exempt administrative employees. Personnel clerks who

screen applicants to obtain data regarding their minimum qualifications and fitness for employment generally do not.

References:

[29 CFR 541.203\(e\)](#)

**22j30 Managers: Loss prevention.**

Loss-prevention managers who have the primary duty of effectively implementing a loss-prevention and shortage-control program for a retailer may be exempt administrative employees. Such an employee is implementing management policies or operating practices that affect business operations to a substantial degree because the effective performance of that duty is essential for a store's profitability.

References:

[WHD Opinion Letter FLSA2006-30 \(Sept. 8, 2006\)](#)

**22j31 Managers: Temporary-staffing companies.**

Staffing managers for temporary-staffing companies may be performing exempt administrative work. A staffing manager who has a primary duty of recruiting, hiring, and managing the temporary labor pool of the employer's clients is performing work in the areas of personnel management, human resources, and labor relations. Examples of situations in which the staffing manager also exercises discretion and independent judgment with respect to matters of significance include:

- (a) Recruiting, hiring and recommending placement of employees into particular assignments;
- (b) Managing the client's temporary labor pool;
- (c) Providing advice on personnel issues;
- (d) Handling complaints;
- (e) Resolving grievances; and
- (f) Terminating employees on behalf of the client's management.

References:

[WHD Opinion Letter FLSA2005-45 \(Oct. 25, 2005\)](#)

**22j32 Medical coders.**

Medical coders are not exempt learned professionals. Medical coding does not require advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual study.

References:

[WHD Opinion Letter FLSA2005-35 \(Oct. 3, 2005\)](#)

**22j33 Medical technologists.**

- (a) Registered or certified medical technologists who have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in an accredited school of medical technology generally meet the duties test for learned professionals.
- (b) Radiology technologists are generally not exempt learned professionals. Entry into the field generally requires only a two- or three-year technology program rather than the four-year degree that demonstrates “advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.” The work is highly skilled and requires significant training but the learned-professional activity is the practice of medicine involved in analyzing and interpreting the developed images, which is performed by the radiologist.

References:

[29 CFR 541.301\(e\)\(1\)](#)

[WHD Opinion Letter FLSA2007-5 \(Feb. 1, 2007\)](#)

**22j34 Museum curators.**

Museum curators generally perform exempt administrative work such as maintaining the quality of a museum’s collection in accordance with museum management principles and practices; soliciting and evaluating additions to a collection; developing and changing exhibits; developing educational materials to accompany the exhibits; overseeing volunteer tour-guide programs; and assisting in fundraising and writing grant proposals.

References:

[WHD Opinion Letter FLSA2005-43 \(Oct. 24, 2005\)](#)

**22j35 Nurses.**

Registered nurses who are registered by the appropriate state examining board generally meet the duties requirements for the learned professional exemption. (Many registered nurses are paid on an hourly basis rather than on a salary or fee basis and are thus nonexempt.) Licensed practical nurses and other similar health-care employees generally do not qualify as exempt learned professionals because a specialized advanced academic degree is not a standard prerequisite for entry into the occupations.

References:

[29 CFR 541.301\(e\)\(2\)](#)

**22j36 Occupational therapy assistants.**

Occupational therapist assistants are not exempt learned professionals because entry into the position typically requires only a two-year degree or the equivalent. They are also not exempt

academic administrators because their position relates to the health, rather than the education, of the students.

References:

[29 CFR 541.204\(c\)\(2\)](#)

[69 FR 22150](#)

[WHD Opinion Letter FLSA2008-17 \(Dec. 19, 2008\)](#)

22j37

**Paralegals.**

**(a) Learned-professional exemption.**

Paralegals—sometimes called legal analysts or legal assistants—generally do not qualify as learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Particular paralegals may qualify as learned professionals if they possess advanced specialized degrees in other fields and apply advanced knowledge in that professional field in the performance of their paralegal duties. For example, an engineer hired as a paralegal to provide expert advice on product liability cases or to assist on patent matters would perform exempt learned-professional duties.

References:

[WHD Opinion Letter FLSA2005-9 \(Jan. 7, 2005\)](#)

[WHD Opinion Letter FLSA2005-54 \(Dec. 16, 2005\)](#)

**(b) Administrative exemption.**

Paralegals generally do not qualify for the administrative exemption. Most jurisdictions strictly prohibit the practice of law by non-lawyers and prohibit lawyers from delegating legal tasks unless the lawyer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work produced. Under those restrictions, paralegals generally exercise particular skills and knowledge rather than the discretion and independent judgment necessary to satisfy the administrative primary duty test. Nor does a typical paralegal formulate or implement management policies, have authority to waive or deviate from established policies, give expert advice, or plan business objectives.

References:

[WHD Opinion Letter FLSA2006-27 \(July 24, 2006\)](#)

[WHD Opinion Letter FLSA2005-54 \(Dec. 16, 2005\)](#)

**(c) Highly compensated employees.**

Some paralegals may meet the highly compensated employee test. That test does not require an exempt primary duty, only that the employee customarily and regularly perform one or more exempt executive, administrative, or professional duties. Keeping and maintaining corporate records, assisting with bank-account matters, and budgeting, for example, are exempt administrative matters. Paralegals who receive the required compensation and who

customarily and regularly engage in one of those duties generally qualify as exempt highly compensated employees.

References:

[WHD Opinion Letter FLSA2019-8 \(July 1, 2019\)](#)

**22j38 Physician assistants.**

Physician assistants generally meet the duties test for the learned professional exemption.

References:

[29 CFR 541.301\(e\)\(4\)](#)

**22j39 Pilots, copilots, and flight engineers.**

**(a) Exemptions do not apply.**

WHD's position is that pilots, co-pilots, and flight engineers are not exempt learned professionals.

Aviation is not a field of science or learning, and the knowledge required to be a pilot is not customarily acquired by a prolonged course of specialized intellectual instruction. Further, while pilots, co-pilots, and flight engineers may be exempt executive or administrative employees if they also have other duties, piloting itself is not exempt executive or administrative work.

**(b) Non-enforcement policy.**

WHD has adopted a non-enforcement position for pilots and copilots of airplanes and rotorcraft who:

- (1) Hold an FAA Airline Transport Certificate or Commercial Certificate;
- (2) Are compensated on a salary or fee basis at no less than the standard salary level; and
- (3) Are engaged in:
  - a. Flying aircraft as business or company pilots;
  - b. Aerial mineral exploration;
  - c. Aerial mapping and photography,
  - d. Aerial forest fire protection;
  - e. Aerial meteorological research;
  - f. Test flights of aircraft in connection with engineering, production, or sale;

- g. Aerial logging, fire suppression, forest fertilizing, forest seeding, forest spraying, and related activities involving precision flying over mountainous forest areas;
- h. Flying activities in connection with transmission tower construction, transmission line construction, transportation of completed structures with precision setting of footings, concrete pouring; or
- i. Aerial construction of sections of oil drilling rigs and pipe-lines, and ski-lift and fire lookout construction.

**(c) Exceptions to non-enforcement policy.**

WHD does enforce the FLSA's minimum-wage and overtime requirements for:

- (1) Pilots engaged in agricultural crop-dusting operations;
- (2) Employees subject to the McNamara-O'Hara Service Contract Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act; and
- (3) Support and maintenance personnel covered by the FLSA.

WHD's non-enforcement policy does not relieve employers from their obligations under collective-bargaining agreements or from liability incurred in a private suit under section 16(b) of the FLSA.

**(d) Flight testing.**

WHD has adopted a non-enforcement position toward flight engineers engaged primarily in flight-testing airplanes or rotorcraft who have formal training equivalent to at least two years of college engineering education, have 500 hours flight time as a flight engineer or pilot, and are paid on a salary or fee basis at no less than the standard salary level.

References:

[69 FR 22156](#)

[WHD Opinion Letter FLSA-585 \(Sept. 2, 1975\)](#)

[WHD Opinion Letter FLSA2009-6 \(Jan. 14, 2009\)](#)

[WHD Opinion Letter FLSA2018-3 \(Jan 5, 2018\)](#)

**22j40 Police, fire fighters, and other first responders.**

Police officers, fire fighters, and other first responders serving in those capacities are not exempt administrative or professional employees. They are employed to supply and produce the public services that their agencies exist to furnish. However, personnel such as police lieutenants and captains and fire battalion chiefs may qualify as exempt executives.

References:

[29 CFR 541.3\(b\)](#)

[WHD Opinion Letter FLSA2018-3 \(Jan. 5, 2018\)](#)

[WHD Opinion Letter FLSA2005-40 \(Oct. 14, 2005\)](#)

[WHD Opinion Letter FLSA-1175 \(May 19, 1988\)](#)

**22j41**      **Product analysts.**

Employees whose primary duty is devising tests for, testing, reporting on, and educating sales personnel on the employer's new and potential products are performing exempt administrative work. The work relates to the functional areas of quality control, research, and marketing. Further, the employees exercise discretion and independent judgment in matters of significance by devising tests, evaluating current product uses, and composing reports that include recommendations on sales strategies and product development.

References:

[WHD Opinion Letter FLSA2008-3 \(Apr. 21, 2008\)](#)

**22j42**      **Purchasing agents.**

Purchasing agents with authority to bind the company on significant purchases are generally performing exempt administrative duties even if they must consult with top management officials on some purchases.

References:

[29 CFR 541.203\(f\)](#)

[WHD Opinion Letter FLSA2008-1 \(Mar. 6, 2008\)](#)

**22j43**      **Real-estate occupations.**

- (a) Acquisition agents generally meet the duties test for exempt administrative employees. They generally perform various duties related to purchasing, procurement, and legal and regulatory compliance, which are exempt administrative duties. Acquisition agents generally also exercise judgment and discretion in matters of significance to their employer's business because they interpret management policies; negotiate, consult with, and give expert advice to management; and financially bind the client on significant matters.
- (b) Relocation agents generally meet the duties test for exempt administrative employees. They generally furnish relocation assistance to property occupants by evaluating and recommending potential replacements to them and advise the property owner on those obligations and recommendations. These are exempt administrative duties relating to the general business operations of procurement, government relations, and legal and regulatory compliance. Relocation agents generally exercise judgment and discretion in matters of significance to their employer's business through their recommendations and proposals, such as analyzing housing alternatives, recommending replacement housing payments, and advising the client on significant financial matters.
- (c) Property management agents may perform exempt administrative duties. They may have duties such as dealing with government authorities, utility companies, contractors, occupants, and other consultants on the employer's or client's behalf; ensuring compliance with property and environmental-protection laws; developing operations and maintenance plans; and preparing specifications and accepting bids for construction work. Those are exempt administrative duties because they relate to the general business operations of government

relations, legal compliance, purchasing and procurement, and quality control. They involve matters of significance to the employer's or client's business in which the agent typically exercises discretion and independent judgment, such as implementing management policies, carrying out major assignments, and negotiating for the company on significant matters.

References:

[WHD Opinion Letter FLSA2006-23 \(June 29, 2006\)](#)

22j44

**Real-estate sales.**

**(a) Generally.**

Real-estate sales employees generally qualify as outside-sales personnel. They generally meet the sales test because "sales" includes contracts to sell. They are typically required, as a customary and regular part of their sales efforts, to spend time at the property to be sold and visit prospective clients at the prospects' homes and offices. To do so, most of them must leave their employer's place of business.

**(b) Model homes.**

Real-estate sales employees stationed in a model home on a tract from which parcels of real property are being sold will generally qualify as exempt outside-sales employees if they customarily and regularly leave the model home for sales purposes, such as showing available parcels to potential buyers. In this case, the model home, not the tract itself, is the employer's place of business. Time spent returning to the model home or other location to conclude a transaction or continue the sales effort would be part of the employee's outside-sales activity. Further, not every home called a model home would be a place of business of the employer. An open house to which a sales employee is assigned to meet prospects who may buy that house or a similar one on the tract may more properly be analogized to the hotel sample room of a traveling sales employee than a place of business.

**(c) Activities in conjunction with outside-sales work.**

Certain activities performed by real-estate sales employees in the employer's place of business may be exempt work if they are in conjunction with and in furtherance of the employees' outside sales work. Examples include:

- (1) Bringing a multiple listing book up to date,
- (2) Calling prospects with whom the sales employee has been dealing during outside sales activities,
- (3) Dictating or writing letters to such prospects,
- (4) Talking to such prospects in the office about their particular transactions
- (5) Calling a list of prospective buyers or sellers of homes with whom the sales employee has had no prior contact,



- (6) Preparing a contract and other forms required for a sale negotiated during the sales employee's outside sales activity, and
- (7) Talking to a walk-in prospect with whom the employee has had no prior contact and showing photographs and discussing terms on specific houses, if such activity results in subsequent outside sales activity with the prospect.

**(d) Timeshare resorts.**

Employees whose primary duty is to promote and sell timeshare interests in resorts owned or operated by their employers do not qualify for the outside sales exemption when they sell timeshares on site at the resorts. A resort is generally maintained on a permanent basis for an employer who has an ongoing interest in it. Under those circumstances, the entire resort constitutes the employer's place of business. These employees may be outside-sales employees if they customarily and regularly make sales at a location that is not the employer's place of business.

References:

29 USC 203(k)

[29 CFR 541.502](#)

[WHD Opinion Letter FLSA2007-1 \(Jan. 25, 2007\)](#)

[WHD Opinion Letter FLSA2007-2 \(Jan. 25, 2007\)](#)

[WHD Opinion Letter FLSA2007-4 \(Jan. 25, 2007\)](#)

[WHD Opinion Letter FLSA \(April 21, 1964\)](#)

**22j45 Respiratory therapists.**

Respiratory therapists are not exempt learned professionals. A four-year degree is not a standard prerequisite to enter into the occupation.

References:

[WHD Opinion Letter FLSA2006-26 \(July 24, 2006\)](#)

**22j46 Sales engineers.**

An employee with a 4-year degree in engineering and whose duties require a combination of sales and engineering activities is performing exempt learned professional duties if the employee's primary duty is performing exempt engineering tasks rather than nonexempt sales tasks. For example, an employee whose engineering background and abilities determine a product's engineering specifications, resolve engineering related problems, and give technical support, which results in sales or securing orders, is an exempt learned professional.

References:

[WHD Opinion Letter FLSA2005-28 \(Aug. 26, 2005\)](#)

**22j47 School resource officers.**

The responsibilities and duties of school resource officers vary widely depending on the employing agency and the school where the officer works. Officers with duties broader than those of a typical law-enforcement officer may qualify as exempt administrative employees. WHD has opined that officers who are minimally supervised, exercise control over their own budgets, furnish advice to school administrators on various topics, implement and execute their own policies, liaise to local law-enforcement agencies, coordinate with various social-services personnel, and exercise significant discretion over their own work schedule and execution of their duties are performing exempt administrative duties.

References:

[WHD Opinion Letter FLSA2007-8 \(Feb. 15, 2007\)](#)

**22j48 Shoppers: comparison.**

Comparison shopping performed by an employee of a retail store who merely reports prices at a competitor's store is nonexempt work. However, employees who evaluate reports on competitor prices to set the employer's own prices are generally performing exempt administrative work.

References:

[29 CFR 541.203\(i\)](#)

**22j49 Social-service workers.**

- (a) Case managers employed by social-service organizations, whether private non-profits or government agencies, are generally not exempt. Their activities generally relate to furnishing ongoing, day-to-day case-management services rather than general business operations. Further, they are generally not required to have the specialized academic training required for a learned-professional exemption.
- (b) Social workers with at least a bachelor's degree in a field such as social work, drug and alcohol education, counseling, psychology, or criminal justice and who work in the field of their degree are generally performing exempt learned professional duties if the degree is a customary requirement to enter into the particular field of social work.
- (c) Advocates for individuals with disabilities are generally not exempt administrative employees. Their activities generally relate to ongoing, day-to-day case-management services and furnishing the social services offered by the organization rather than general business operations.

References:

[WHD Opinion Letter FLSA2007-7 \(Feb. 8, 2007\)](#)

[WHD Opinion Letter FLSA2005-30 \(Aug. 29, 2005\)](#)

[WHD Opinion Letter FLSA2005-50 \(Nov. 4, 2005\)](#)

[WHD Non-Administrator Opinion Letter FLSA \(January 24, 2001\)](#)

**22j50 Solicitors of charitable donations.**

Persons employed to solicit contributions on behalf of charitable organizations are not outside-sales employees. Promises of future charitable donations and the concept of donating to a charity are not “sales” because they are not orders or contracts for which a consideration will be paid. Exchanging a token gift for the promise of a charitable donation does not constitute a sale.

References:

[WHD Opinion Letter FLSA2006-16 \(May 22, 2006\)](#)

**22j51 Team leaders who complete major projects.**

An employee who leads a team of other employees assigned to complete major projects for the employer (e.g., purchasing, selling, or closing all or part of the business; negotiating a real estate transaction or a collective bargaining agreement; or designing and implementing productivity improvements) is generally performing exempt administrative work even if the employee does not have direct supervisory responsibility over the other employees.

References:

[29 CFR 541.203\(c\)](#)

**22j52 Veterinary technician.**

Veterinary technicians are not exempt learned professionals. A four-year degree is not a standard prerequisite to enter into the occupation.

References:

[WHD Opinion Letter FLSA \(Dec. 6, 1984\)](#)

[WHD Non-Administrator Opinion Letter FLSA \(June 30, 1997\)](#)

**22k (RESERVED)**