

Small Entity Compliance Guide

to the

Fair Labor Standards Act's Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees

April 23, 2024

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1. Introduction

On April 23, 2024, the Department of Labor (Department) announced the final rule, *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*.¹ This rule updates and revises the Department’s regulations at [29 CFR part 541](#) of the Code of Federal Regulations (CFR), which implement a provision in the Fair Labor Standards Act (FLSA) that exempts certain kinds of “white-collar” employees from the Act’s minimum wage and overtime pay requirements. Specifically, the final rule raises certain earnings thresholds that are part of the test for exemption and establishes a mechanism for future increases. As explained below, there will be an initial update to the standard salary level for executive, administrative, and professional employees to \$844 per week on July 1, 2024, and the standard salary level will increase to \$1,128 per week on January 1, 2025. There will be an initial update to the annual earnings threshold for highly compensated employees to \$132,964 per year on July 1, 2024, followed by an increase to \$151,164 on January 1, 2025.

This guide provides an overview of each of the part 541 exemptions, describes the basic tests and requirements for each, and includes a summary of the final rule’s changes to these requirements.²

This guide is intended as general information only; the *Federal Register* and the CFR remain the official resources for regulatory information published by the Department.

2. Minimum Wage and Overtime

The FLSA is the federal labor law that provides basic workplace protections to most workers in the U.S. and guarantees them at least the federal minimum wage for every hour they work, and overtime, at not less than one and-one-half times their regular rates of pay, for hours they work beyond 40 in a workweek. The FLSA is enforced by the Department’s Wage and Hour Division (WHD) and covers more than 143 million workers.

The FLSA does not provide an exemption from these requirements specifically for small businesses. Generally, the FLSA applies to employees of enterprises that have an annual gross volume of sales made or business done totaling \$500,000 or more, and to employees individually covered by the law because they are engaged in interstate commerce or in the production of goods for commerce. In addition, employees of certain entities are covered by the FLSA regardless of the amount of gross volume of sales or business done. These entities include hospitals, businesses providing medical or nursing care for residents, schools (whether operated for profit or not-for-profit), and public agencies.

¹ <https://www.dol.gov/ot>

² This guide meets the requirements of section 212 of the [Small Business Regulatory Enforcement Fairness Act of 1996](#) (SBREFA), with regard to the final rule. The Department’s Office of Small and Disadvantaged Business Utilization (OSDBU) serves as Ombudsman for small businesses under SBREFA. See <https://www.dol.gov/agencies/oasam/centers-offices/business-operations-center/osdbu/compliance-assistance/resources>.

The FLSA creates a level playing field for businesses nationwide by setting a floor on wages and a premium for excess work. Individual cities and states, however, may have stronger wage and hour protections than the minimum federal standards established under the FLSA. If a state or city establishes a more protective standard than the provisions of the FLSA, the higher standard applies in that state or city.

3. What Employees Are Exempt from the FLSA?

While the FLSA applies to the majority of employees in the United States, it does allow employers to claim exemptions from its wage and hour requirements for certain employees whose jobs meet specific criteria.

Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime requirements for employees employed as bona fide executive, administrative, professional, or outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain employees in computer-related occupations. These exemptions are defined in the Department's regulations located at [29 CFR part 541](#) (hereinafter the "part 541 exemptions").

To meet one of these exemptions, employees generally must satisfy certain tests regarding their job duties and be paid at least a certain minimum salary. Job titles alone do not determine exemption status, and neither does the receipt of a particular salary. For an exemption to apply, an employee's specific job duties and earnings must meet all of the applicable requirements. It is important to note that simply paying an employee a salary does not relieve an employer of minimum wage and overtime obligations to that employee. Unless they meet all of the criteria for a specific exemption, employees covered by FLSA protections who are paid a salary are still due overtime pay if they work more than 40 hours in a week.

4. Claiming an Exemption – Three Basic Tests

For an employer to claim an exemption for a particular employee, three tests generally need to be satisfied:

- 1) **PAYMENT ON A SALARY BASIS:** The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed;
- 2) **PAYMENT OF A MINIMUM SALARY LEVEL:** The amount of salary paid must meet a specified minimum amount; and
- 3) **A DUTIES TEST:** The employee's job duties must primarily involve those associated with exempt executive, administrative, professional, outside sales, or computer employees.

5. The Salary Basis Test

Generally, for an employer to claim a part 541 exemption from minimum wage and overtime requirements for an employee, that employee must be paid on a salary basis.

Being paid on a "salary basis" means an employee regularly receives each pay period on a weekly, or less frequent, basis a predetermined amount of money constituting all or part of the employee's compensation. The predetermined amount cannot be reduced because of variations in

the quality or quantity of the employee's work. Generally, an exempt employee must receive the salary for any week in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work.

Deductions from pay are permissible only:

- when an exempt employee is absent from work for one or more full days for personal reasons other than sickness or disability;
- when an exempt employee is absent from work for one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice of providing paid sick leave;
- to offset amounts employees receive as jury or witness fees, or for military pay;
- for penalties imposed in good faith for infractions of safety rules of major significance; or
- for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions.

See [29 CFR 541.602](#).

An employer is not required to pay the full salary in the initial or final week of employment in which some days are not actually worked, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. If the employer makes improper deductions from an employee's predetermined salary, that employee is not paid on a "salary basis." If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

The salary basis test does not apply to doctors, lawyers, teachers, or outside sales employees. The salary basis test also does not apply to business owners who own at least a bona fide 20-percent equity interest in their enterprise and are actively engaged in its management.

"Fee Basis"

Administrative, professional, and computer employees may be paid on a "fee basis" rather than on a salary basis. If the employee is paid an agreed sum for a single job, regardless of the time required for its completion, the employee will be considered to be paid on a "fee basis." A fee payment is generally paid for a unique job, rather than for a series of jobs repeated a number of times and for which identical payments repeatedly are made. To determine whether the fee payment meets the minimum salary level requirement, the test is to consider the time worked on the job and determine whether the payment is at a rate that would amount to at least the full standard salary level if the employee worked 40 hours. For example, under the \$1,128 per week standard salary level that takes effect on January 1, 2025, an artist paid \$600 for a picture that took 20 hours to complete meets the minimum salary requirement since the rate would result in \$1,200 if 40 hours were worked.

6. The Salary Level Test

6.1 *Standard Salary Level*

Generally, an employee must be paid at least a certain minimum amount—the standard salary level—to meet one of the part 541 exemptions. Under the 2024 final rule, the standard salary level will change as follows:

- On July 1, 2024, the Department will update the standard salary level using the existing methodology from the 2019 final rule and current data, raising the salary level from \$684 per week to \$844 per week (equivalent to \$43,888 per year).
- On January 1, 2025, the Department will implement the new salary methodology, setting the standard salary level at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (the South), resulting in a salary level of \$1,128 per week (equivalent to \$58,656 per year).
- On July 1, 2027, and every three years thereafter, the standard salary level will update by applying up-to-date earnings data to the salary methodology in the regulations at the time of the update, using the most recent four quarters of earnings data. The Department will publish a notice announcing the updated salary level amount at least 150 days before the update takes effect. Refer to section 6.6 (“Future Updates to the Standard Salary Level and HCE Threshold”) for information about when such updates may be delayed.

As with the salary basis test, the salary level test does not apply to outside sales employees, teachers, and employees practicing law or medicine. The salary level test also does not apply to business owners who own at least a bona fide 20-percent equity interest in their enterprise and are actively engaged in its management.

6.2 *Alternatives to the Standard Salary Level for Certain Occupations*

Exempt computer employees may be paid a salary of at least the standard salary level per week, or on an hourly basis of at least \$27.63 an hour.

Academic administrative employees may meet the exemption either by satisfying the standard salary level test or, alternatively, being paid on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed. The special alternative salary level does not apply to employees outside of an educational institution.

6.3 *Special Salary Levels for Employees in United States Territories and the Motion Picture Industry*

The part 541 regulations provide:

- A special salary level of \$455 per week for employees who work in Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands;
- A special salary level of \$380 per week for employees who work in American Samoa; and

- A special “base rate” threshold for employees who work in the motion picture producing industry and are not paid on a salaried basis. This base rate is \$1,043 per week, or a proportionate amount based on the number of days the employee works in the week based on a six-day workweek.

The 2024 final rule did not change these special earnings thresholds, but the Department noted that they will be addressed in a future final rule.

6.4 *The Highly Compensated Employee (HCE) Test*

The part 541 regulations contain a special test for exemption for certain highly compensated employees, which applies a more relaxed duties test. The standard and HCE duties criteria are discussed below in section 7 (“The Duties Test”). The HCE test’s primary purpose is to serve as a streamlined alternative for very highly compensated employees because a very high level of compensation is a strong indicator of an employee’s exempt status, thus eliminating the need for a detailed duties analysis.

To be eligible for exemption under the HCE test, an employee must earn a certain amount in total annual compensation. Under the 2024 final rule, the HCE test’s total annual compensation requirement will change as follows:

- On July 1, 2024, the Department will update the HCE total annual compensation threshold using the existing methodology from the 2019 final rule and current data, and the annual compensation level to be exempt from overtime pay will increase from \$107,432 to \$132,964.
- On January 1, 2025, the Department will implement the new salary methodology, setting the HCE total annual compensation threshold at the 85th percentile of full-time salaried workers nationally, resulting in a compensation level of \$151,164.
- On July 1, 2027, and every three years thereafter, the HCE total annual compensation threshold will update by applying up-to-date earnings data to the methodology in the regulations at the time of the update, using the most recent four quarters of data. The Department will publish a notice announcing the updated HCE threshold at least 150 days before the update takes effect. Refer to section 6.6 (“Future Updates to the Standard Salary Level and HCE Threshold”) for information about when such updates may be delayed.

Nondiscretionary bonuses and incentive payments (including commissions) may be counted toward the total annual compensation threshold requirement, but the employer must pay at least the full standard salary level per week (not including such bonuses or incentive payments) on a salary or fee basis to meet the HCE test.

If an employee’s total compensation in a given annual period fails to meet the HCE total annual compensation threshold, an employer may make a “catch-up” payment within one month of the end of the annual period. Any such catch-up payment counts only toward the prior year’s total annual compensation. If such a catch-up payment is not made within the timeframe allotted, the exemption is lost and overtime premium pay must be paid for any week the employee worked more than 40 hours.

6.5 Nondiscretionary Bonuses and Incentive Payments

Employers may use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard or special salary levels. For example:

- Beginning July 1, 2024, when the standard salary level is \$844 per week, employers may use such payments to satisfy up to \$84.40 of the \$844 per week threshold, but must still pay at least \$759.60 per week on a salary basis.
- Beginning January 1, 2025, when the standard salary level is \$1,128 per week, employers may use such payments to satisfy up to \$112.80 of the \$1,128 per week threshold, but must still pay at least \$1,015.20 per week on a salary basis.

Nondiscretionary bonuses and incentive payments (including commissions) are forms of compensation promised to employees to induce them to work more efficiently or to remain with the company. Examples may include individual or group production bonuses, and bonuses for quality and accuracy of work. Incentive payments, including commissions, are also considered nondiscretionary as such payments are generally based on a prior contract or understanding, and employees generally have a contract right to the commission promised.

By contrast, discretionary bonuses are generally paid without prior contract, promise, or announcement, and the decision to provide the bonus and the payment amount is at the employer's sole discretion. An example would be an "on-the-spot" award made without announcement and at the employer's sole discretion (e.g., an unannounced year-end bonus). Discretionary bonuses cannot be used to satisfy any part of the salary level requirement.

For employers to credit nondiscretionary bonuses and incentive payments toward the salary level test, they must be paid on an annual or more frequent basis. The employer may use any 52-week period, such as a calendar year, a fiscal year, or an anniversary of the hire year. If, by the end of the 52-week period, the sum of the salary paid plus the nondiscretionary bonuses and incentive payments (including commissions) paid does not equal the required salary level for the 52-week period, the employer may make a "catch-up" payment to achieve the required level within one pay period of the end of the 52-week period. Any such "catch-up" payment counts only toward the prior year's salary, not toward the salary amount during the 52-week period in which it was paid. If such a catch-up payment is not made within the timeframe allotted, the exemption is lost and overtime premium pay must be paid for any week the employee worked more than 40 hours.

As noted above, employees who are exempt under the HCE test must receive at least the full standard salary amount on a salary or fee basis. The HCE test does not permit any portion of this salary amount to be satisfied by nondiscretionary bonuses or incentive payments.

6.6 Future Updates to the Standard Salary Level and HCE Threshold

The standard salary level and the HCE total annual compensation requirement will update every three years to reflect current earnings data using the most recent available four quarters of earnings data, as published by BLS, and using the methodologies in effect at the time of each update. The next three-year update will take place on July 1, 2027.

At least 150 days before the date of a scheduled update to the standard salary level and the HCE total annual compensation requirement, the Department will publish in the *Federal Register* a

notice with the new earnings levels described above. Note, however, that the Department may temporarily delay a scheduled update for 120 days where unforeseen economic or other conditions warrant.

6.7 Schedule of Changes to the Standard Salary Level and HCE Thresholds

DATE	STANDARD SALARY LEVEL	HCE TOTAL ANNUAL COMPENSATION THRESHOLD
Before July 1, 2024	\$684 per week (equivalent to \$35,568 per year)	\$107,432 per year, including at least \$684 per week paid on a salary or fee basis.
July 1, 2024	\$844 per week (equivalent to \$43,888 per year)	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis.
January 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis.
July 1, 2027, and every three years thereafter	To be set using the methodology in effect at the time of the update based on current earnings data.	To be set using the methodology in effect at the time of the update based on current earnings data.

7. The Duties Test

To meet any of the part 541 exemptions, employees must meet certain tests regarding their job duties. The regulations establish separate duties requirements for executive, administrative, professional, outside sales, and computer employees, respectively.

Most employees who are exempt under the white-collar exemptions are subject to the standard duties test. Under the standard duties test, an employee’s primary duty must be that of an exempt executive, administrative, or professional employee. “Primary duty” means the principal, main, major, or most important duty that the employee performs. Determination of an employee’s primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee’s job as a whole.

Certain highly-paid employees can meet the exemption under the special HCE test. As discussed above, this test applies only to employees who meet the HCE test’s total annual compensation requirement, including at least the standard salary level per week on a salary or fee basis. Under the HCE duties test, the employee’s primary duty must still consist of office or non-manual work, but the employee need only “customarily and regularly” perform one or more of the exempt duties of a bona fide executive, administrative, or professional employee, as described in the regulations.

The duties requirements for each of the part 541 exemptions are described below in greater detail.

7.1 *Executive Exemption*

To meet the executive employee exemption under the standard test, all of the following job duties requirements must be satisfied:

- The employee’s primary duty must be managing the enterprise in which the employee is employed, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent (for example, one full-time and two half-time employees are equivalent to two full-time employees); and
- The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

7.2 *Administrative Exemption*

To meet the administrative employee exemption under the standard test, all of the following duties requirements must be satisfied:

- The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- The employee’s primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

Work which is directly related to management or general business operations includes, but is not limited to, work in functional areas such as 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; legal and regulatory compliance; and similar activities. The Department’s regulations at 29 CFR 541.203 discuss examples of where employees in certain occupations would generally pass or fail the duties requirements for exempt administrative employees.

Academic administrative employees can meet the administrative exemption if their primary duty is performing administrative functions directly related to academic instruction or training in an educational institution, such as principals and vice-principals responsible for the operation of an elementary or secondary school, department heads at institutions of higher education, academic counselors who perform work such as administering school testing programs, assisting students with academic problems, and advising students concerning degree requirements, and others with similar responsibilities.

7.3 *Professional Exemption*

Several different kinds of “professional” employees may meet the professional employee exemption. These include “learned professionals,” “creative professionals,” teachers, and employees practicing law or medicine.

Learned professionals

To be a “learned professional” under the standard test, all of the following duties requirements must be satisfied:

- The employee’s primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning, including law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy, and other occupations that have a recognized professional status and are distinguishable from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type, but is not in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction, which means specialized academic training is a standard prerequisite for entry into the profession.

The Department’s regulations at [29 CFR 541.301\(e\)](#) describe specific circumstances where employees in certain occupations generally meet the duties requirements to be exempt learned professionals.

Creative professionals

To meet the creative professional employee exemption under the standard test, the employee’s primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. This includes such fields as music, writing, acting, and the graphic arts.

Teachers

Teachers are exempt if their primary duty is teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of children with disabilities or gifted children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers.

Employees practicing law or medicine

An employee holding a valid license or certificate permitting the practice of law or medicine is exempt if the employee is actually engaged in such a practice. An employee who holds an academic degree for the general practice of medicine is also exempt if they are engaged in an internship or resident program for the profession.

7.4 *Outside Sales Exemption*

To meet the outside sales employee exemption, all of the following duties requirements must be satisfied:

- The employee’s primary duty must be making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer. “Sales” includes 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; and
- The employee must be customarily and regularly engaged away from the employer’s place or places of business.

7.5 *Computer Employee Exemption*

To meet the computer employee exemption, the following duties requirements must be satisfied:

- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field; and
- The employee’s primary duty must consist of:
 - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

7.6 *Highly Compensated Employees*

An employee with a primary duty of office or non-manual work who meets the HCE test’s total annual compensation requirements is exempt if the employee customarily and regularly performs at least one of the exempt duties of a bona fide executive, administrative or professional employee, as described in the regulations. An employee who performs such exempt duties only on an isolated or occasional basis will not satisfy this duties requirement.

8. Common Questions

8.1 *Are the FLSA’s recordkeeping requirements different for exempt EAP employees?*

Yes. Unlike other employees, employers are not required to keep records related to the daily or weekly worktime performed by employees who are exempt EAP employees. However, employers must still keep certain records related to the identity and payment of EAP employees, as described in the Department’s recordkeeping regulations at [29 CFR part 516](#).

8.2 Do non-exempt workers have to be paid on an hourly basis?

No. Nothing in the FLSA or in the regulations governing the EAP exemptions requires employers to pay overtime-eligible employees on an hourly basis. There are millions of salaried employees (white and blue collar alike) who are legally entitled to overtime pay under the current regulations. Exempt salaried workers who are affected by the 2024 final rule and its scheduled increases to the certain earning thresholds do not need to be reclassified from salaried to hourly pay status.

8.3 How do the part 541 regulations interact with state laws regarding overtime pay?

The FLSA provides minimum standards and does not preempt a state from establishing more protective standards. If a state establishes a more protective standard than the provisions of the FLSA and the Department's implementing regulations, the higher standard applies in that state. This includes, for example, exemption criteria for EAP employees under state law with higher earnings thresholds than those provided in the Department's federal regulations, or more stringent job duties requirements.

8.4 Do employees entitled to overtime pay have to record their hours on a daily basis or punch a time clock every time they start or stop work?

Employees entitled to overtime pay are not required to punch a time clock. The FLSA requires that employers keep certain records for each nonexempt employee so those workers can be sure that they get paid the wages that they earn and are owed. Employers have options for accounting for workers' hours—some of which are very low cost and not burdensome. There is no particular form or order of records required and employers may choose how to record hours worked for overtime-eligible employees. For example, where an employee works a fixed schedule that rarely varies, the employer may simply keep a record of the schedule and then indicate the changes to the schedule that the worker actually worked when the worker's hours vary from the schedule ("exceptions reporting"). See [Fact Sheet 21: Recordkeeping Requirements under the Fair Labor Standards Act \(FLSA\)](#).

For employees with a flexible schedule, an employer does not need to require an employee to sign in each time she starts and stops work. The employer must keep an accurate record of the number of daily hours worked by the employee, not the specific start and end times. So an employer could allow an employee to just provide the total number of hours she worked each day, including the number of overtime hours, by the end of each pay period.

9. Key Terms

The following is a list of key terms as used in the final rule.

EAP Exemption: Section 13(a)(1) of the FLSA, which was included in the original Act in 1938, exempts from the minimum wage and overtime pay requirements "any employee employed in a bona fide executive, administrative, or professional capacity[.]" The exemption is commonly referred to as the "white-collar" or executive, administrative, or professional (EAP) exemption.

Highly Compensated Employee (HCE) means highly compensated employee.

HCE Test refers to an alternative test for exemption that applies to certain highly compensated employees and combines a much higher annual compensation requirement with a minimal duties test.

Standard Salary Level refers to the minimum weekly salary an employee must be paid to be an exempt executive, administrative, or professional employee under the FLSA.

10. Additional Information

For more information regarding these regulations, please visit our website at <https://www.dol.gov/ot>.

Questions on compliance and enforcement should be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US-WAGE ((866) 487-9243) during business hours or log onto WHD's website at <https://www.dol.gov/agencies/whd/contact/local-offices> for a nationwide listing of WHD district and area offices.