

Fact Sheet #17H: Highly-Compensated Workers and the Part 541-Exemptions Under the Fair Labor Standards Act (FLSA)

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hour worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 in a workweek. However, Section 13(a)(1) of the FLSA provides an exemption from both [minimum wage](#) and [overtime pay](#) for employees employed as bona fide [executive](#), [administrative](#), [professional](#) and [outside sales](#) employees. Section 13(a)(1) and Section 13(a)(17) also exempts certain [computer](#) employees. To qualify for exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455* per week.

Highly-Compensated Workers

The regulations contain a special rule for “highly-compensated” workers who are paid total annual compensation of \$100,000 or more. A highly compensated employee is deemed exempt under Section 13(a)(1) if:

1. The employee earns total annual compensation of \$100,000 or more, which includes at least \$455* per week paid on a salary basis;
2. The employee’s primary duty includes performing office or non-manual work; and
3. The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Thus, for example, an employee may qualify as an exempt highly-compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.

Total Annual Compensation

The required total annual compensation of \$100,000 or more may consist of commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period, but does not include credit for board or lodging, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits.

Make-up Payments and Prorating

There are special rules for prorating the annual compensation if employees work only part of the year, and which allow payment of a single lump-sum, make-up amount to satisfy the required annual amount at the end of the year and similar make-up payments to employees who terminate before the year ends.

Customarily and Regularly

“Customarily and regularly” means greater than occasional but may be less than constant, and includes work normally and recurrently performed every workweek but does not include isolated or one-time tasks.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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Note (added January 2018):

*The Department of Labor is undertaking rulemaking to revise the regulations located at 29 C.F.R. part 541, which govern the exemption of executive administrative, and professional employees from the Fair Labor Standards Act's minimum wage and overtime pay requirements. Until the Department issues its final rule, it will enforce the part 541 regulations in effect on November 30, 2016, including the \$455 per week standard salary level. These regulations are available at: <https://www.dol.gov/whd/overtime/regulations.pdf>