

Important information regarding recent overtime litigation in the U.S. District Court of Eastern District of Texas.

## Fact Sheet 17Q: Journalists/Reporters 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.

### Journalists/Reporters

The final regulations **do not change** the duties test for the creative professional exemption, which is the most common exemption under which journalists and reporters are tested. The creative professional exemption applies if the employee's [primary duty](#) is work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor (e.g., the fields of music, acting, writing and the graphic arts), as opposed to routine mental, manual, mechanical or physical work. Work that can be produced by a person with general manual or intellectual ability and training is not exempt as *creative*. The requirement of creativity distinguishes the work of a creative professional from work that primarily depends on intelligence, diligence and accuracy. Since employees' duties vary widely, and the creative professional exemption depends on how much invention, imagination, originality or talent is actually exercised by the employee, the determination of whether an employee is exempt as a creative professional must be made on a case-by-case basis.

Relying upon federal case law, the final regulations clarify that employees of newspapers, magazines, television and other media are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product. For example, reporters who rewrite 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 products are subject to substantial control by their employer also do not qualify as exempt creative professionals. However, employees may be exempt creative professionals if their primary duty is to perform on the air in radio, television or other electronic media; to conduct investigative interviews; to analyze or interpret public events; to write editorial, opinion columns or other commentary; or to act as a narrator or commentator. Thus, journalists' duties vary along a spectrum from the nonexempt to the exempt. The less creativity and originality involved in their efforts, and the more control exercised by the employer, the less likely journalists are to be considered exempt. There is no "across the board" exemption for journalists; nor has there ever been. Rather, each determination must be made on a case-by-case basis, as is the case with all job classifications. The majority of journalists, who simply collect and organize public information, or do not contribute a unique or creative interpretation or analysis, are not likely to be exempt.

Nothing in the new rules relieves employers from their contractual obligations to journalists and reporters under collective bargaining agreements. In addition, journalists and reporters paid by the hour are entitled to [overtime](#).

## 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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