July 02, 2024

Exempt Employees

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

Exempt Employees

Reference Number: CTAS-136

In addition to the workers who are not covered by the FLSA, there are some employees who are exempt from the minimum wage and overtime provisions of the Act. These employees are not required to be paid overtime when they work in excess of 40 hours in a workweek. These employees are, however, subject to some of the recordkeeping provisions of the FLSA. Although payment of a salary is an essential element of many exemptions, *the fact that an employee is paid a salary does not by itself make an employee exempt*.

Executive, Administrative and Professional Exemptions

Reference Number: CTAS-137

These exemptions are sometimes called the "white collar" or "Section 541" exemptions, and are governed by the federal regulations found at 29 C.F.R. part 541. These regulations contain detailed requirements for the application of the exemptions. Employers should thoroughly review all of their wage and hour practices and make adjustments to ensure compliance with the rules.

The employer has the burden of proving that a particular exemption applies to a particular employee and, therefore, the employer takes the exemption at his or her peril. Also, even though executive, administrative, and professional employees are specifically excluded from the provisions of the FLSA with regard to minimum wage and overtime, these employees are not exempt from the equal pay provisions and some of the recordkeeping provisions.

In order to qualify for one of these exemptions, an employee must meet certain tests regarding minimum compensation, job duties and responsibilities, and the employee must be paid on a "salary basis." Under the old regulations, each of the white collar exemptions had a "Short Test" and a "Long Test" but these tests have been combined into a single test for each exemption. All of the white-collar exemptions require employees to be paid on a "salary basis" and their "primary duty" must be the performance of exempt work that varies by exemption. An employee who satisfies the test for a white-collar exemption is exempt from the minimum wage and overtime requirements of the FLSA.

The Salary Basis Requirement

Reference Number: CTAS-138

The "salary basis" test is a threshold requirement for the executive, administrative, and professional exemptions.[1] To meet this requirement, an employee must receive each pay period on a weekly or less frequent basis a pre-determined amount that is not subject to reduction for the quality or quantity of work performed. The regulations were revised effective July 1, 2024. Under current regulations, the amount of the guaranteed salary cannot be less than $844 per week (which translates into $43,888 per year). The employee must receive the full salary for any week in which any work is performed, without regard to the number of days or hours worked, but exempt employees are not required to be paid for any week in which no work was performed.[2]

The $844 minimum weekly salary may be translated into an equivalent amount for periods longer than one week (for example, the $844-per-week requirement will be met if the employee is compensated biweekly on a salary basis of not less than $1,688. However, the shortest period of payment that will meet this compensation requirement is one week.[3]

Also, the $844 minimum weekly salary is not dependent on the number of hours worked in the workweek. Part-time employees are subject to the $844 minimum weekly salary in the same way full-time employees are. It cannot be pro-rated to account for the reduced number of hours worked by part-time employees. See Wage-Hour Opinion Letter FLSA2008-1NA (2008 WL 1847289), Feb. 14, 2008.

The regulations contain exceptions that allow deductions from an exempt employee's pay for the following limited reasons: (1) deductions for absences of one or more full days for personal reasons other than sickness or disability (for example, if an employee is absent for one and one-half days for personal reasons, an employer could only deduct one day; however, the regulations contain a special provision that allows public employers to make deductions for absences of less than one day); (2) deductions for absences of one or more full days for sickness or disability if the employer has a paid sick/disability leave

plan in place and the employee has used up his or her paid sick or disability leave (a special provision allows public employers to make deductions for absences of less than one day); (3) deductions to offset any amounts the employee may receive as jury fees, witness fees, or military pay while an employee is on leave for one of these reasons (the employer cannot make deductions for the actual absences for jury duty, witness duty, or temporary military leave; only the pay may be offset); (4) deductions made in good faith for violations of safety rules of major significance (such as rules prohibiting smoking in explosive plants, oil refineries or coal mines); (5) employers may make deductions for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules that are part of written policies applicable to all employees (for example, suspension for violating a written policy prohibiting sexual harassment or workplace violence); (6) the employer is not required to pay full compensation for the first or last week of employment but instead may pay a proportionate part of the employee's salary for the time actually worked during those weeks; and (7) an employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act (FMLA), but instead may pay a proportionate share of the salary for the time actually worked. When calculating the amount of the deductions, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed. A deduction for major safety violations may be made in any amount.[4]

Because the strict salary basis test presented problems for employers in the public sector with regard to deductions for less than one day's absence due to the generally accepted principle that public sector employees should not be paid for time not worked or covered by leave, the DOL issued regulations addressing this issue. The regulations[5] state:

> a. An employee of a public agency who otherwise meets the salary basis requirements of § 541.602 shall not be disqualified from exemption under § 541.100, 541.200, 541.300, or 541.400 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because:
>
> 1. permission for use has not been sought or has been sought and denied;
> 2. accrued leave has been exhausted; or
> 3. the employee chooses to use leave without pay.
>
> b. Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

Under these regulations, a public employee who otherwise meets the requirements for an executive, administrative, or professional exemption does not lose the exemption if the employee is paid according to a pay system under which the employee accrues personal leave and sick leave and, absent the use of such accrued leave, the pay system requires the employee's pay to be reduced for absences for personal reasons or because of illness or injury of *less than one work day*.[6] These regulations also allow a public employer to place an exempt employee on furlough for budget-required reasons without disqualifying the employee from being paid on a salary basis, except in the workweek in which the furlough occurred and the employee's pay was reduced.

With regard to disciplinary deductions, DOL recognizes the increasing liability of employers for their employees' conduct, particularly with respect to sexual harassment, workplace violence, drug and alcohol violations, and violations of state or federal laws, and the corresponding need for employers to be able to impose disciplinary suspensions of less than one week without pay for violations of workplace conduct rules. The regulations allow these deductions as long as there is a written policy in place that applies to all employees. The employer can suspend an exempt employee for one or more full days for disciplinary reasons under the written policy without losing the exemption.[7]

Current regulations provide that employers will not lose the exemption if an employee's pay is merely "subject to" impermissible deductions; instead, the employer must have an "actual practice" of making improper deductions. There is a "safe harbor" rule that protects employers from violations of the salary basis test through impermissible pay deductions if the employer demonstrates a good faith effort to comply with the FLSA by:

1. Having a clearly communicated policy that prohibits improper pay deductions;
2. Having a complaint mechanism in place that allows employees to bring the mistake to the employer's attention;
3. Reimbursing the employee for improper deduction(s); and
4. Making a good faith commitment to comply in the future.[8]

Under old rules, it was possible to violate the salary basis test by seemingly inconsequential actions as having exempt employees punch a time clock, or by paying exempt employees overtime and compensatory time. The current regulations eliminate these problems by providing that an exempt employee can receive additional compensation above the guaranteed minimum salary, and it can be based on additional hours worked beyond the normal workweek. The additional compensation may be paid on any basis, including flat sum, bonuses, straight-time hourly amounts, time-and-one-half or any other hourly basis, and it may include compensatory time. 29 C.F.R. § 541.604.

The following groups of employees are *not subject to the salary basis test*: teachers, doctors, lawyers, and those software professionals who are paid on an hourly basis at least $27.63 per hour. These occupations have special rules exempting them from the salary basis test.[9] Also, for academic administrative employees the salary basis requirement can be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment where the employee is employed.[10]

---

[1] The salary basis requirement does not apply to lawyers and licensed or certified doctors and teachers. For certain computer-related occupations under the professional exemption, they need not be paid a salary if they are paid on an hourly basis at a rate not less than $27.63 an hour. See FLSA Fact Sheet No. 17A, Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees under the Fair Labor Standards Act (U.S. Department of Labor, Wage and Hour Division). Also, for academic administrative employees the salary basis requirement can be met if the employee is compensated on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment where the employee is employed. 29 C.F.R. §§ 541.204(a)(1), 541.600.
[2] 29 C.F.R. §§ 541.600, 541.602.
[3] 29 C.F.R. § 541.600(b).
[4] 29 C.F.R. § 541.602.
[5] 29 C.F.R. § 541.710.
[6] These special provisions apply only when the absence is occasioned by the employee for illness or personal reasons. Deductions cannot be made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions cannot be made for time when work is not available. 29 C.F.R. § 541.602.
[7] 29 C.F.R. § 541.602(b)(5). In the preamble to the 2004 amendments the DOL stated that the rules regarding deductions for violations workplace conduct rules are to be narrowly construed to apply only to serious conduct issues and not to employee performance or attendance. Accordingly, disciplinary deductions for chronic tardiness or absenteeism would not be allowed.
[8] 29 C.F.R.§ 541.603.
[9] 29 C.F.R. §§ 541.303, 541.304, 541.600.
[10] 29 C.F.R. §§ 541.204(a)(1), 541.600.

The Primary Duty Requirement

Reference Number: CTAS-139

In addition to the salary basis test, each of the white-collar exemptions contains a primary duty requirement, which varies with the exemption. "Primary duty" is defined as "the principal, main, major or most important duty that the employee performs" and it "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."[1] The regulations set out the following factors that may be considered, among other things, as a guide to determining whether an employee satisfies the primary duty requirement:

- The relative importance of the exempt duties as compared with other types of duties;
- The amount of time spent performing exempt work;
- The employee's relative freedom from direct supervision; and

- The relationship between the employee's salary and the wages paid other employees for the kind of non-exempt work performed by the employee.

The amount of time spent performing exempt work is considered a "useful guide" under the regulations, but it is not the determining factor. The regulations have eliminated any absolute requirement that an employee spend more than 50 percent of his or her time performing exempt work, stating instead that employees who spend more than 50 percent of their time performing exempt work generally will satisfy the primary duty requirement but time alone is not the sole test. Employees who spend less than 50 percent of their time performing exempt duties can still be exempt if the other factors warrant that conclusion.[2] Executive employees who perform both exempt and non-exempt work generally will not be disqualified from exemption as long as the executive makes the decision regarding when to perform non-exempt duties and the executive remains responsible for the success or failure of the business operations under his or her management while performing non-exempt duties.[3]

---

[1] 29 C.F.R. § 541.700(a).
[2] 29 C.F.R. § 541.700.
[3] 29 C.F.R. § 541.106.

Executive Employee Exemption

Reference Number: CTAS-140

The executive exemption applies to managerial employees. To be classified as a bona fide executive employee under the FLSA regulations, all of the following requirements must be met:[1]

1. The employee must be compensated on a salary basis at a rate not less than $844 per week ($43,888 per year);
2. The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
3. The employee must customarily and regularly direct the work of two (2) or more other full-time employees, or their equivalent; and
4. The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

The regulations give the following examples of "management" functions: interviewing, selecting, and training employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among employees; determining the type of materials, supplies, machinery or tools to be used; and providing for the safety of the workers and the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.[2]

The requirement that an executive employee direct the work of two or more employees is satisfied when the executive supervises at least two full-time employees or the equivalent. For example, the executive could supervise one full-time employee and two part-time employees, or four part-time employees.[3] The phrase "customarily and regularly" as used in the regulations signify a greater frequency than occasional, but may be less than constant.[4]

The regulations also contain factors that may be considered in determining whether the executive employee's suggestions and recommendations are given "particular weight." These factors include: whether it is part of the employee's job to make suggestions and recommendations; the frequency with which they are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. The employee's suggestions and recommendations may have "particular weight" even if a higher level manager's recommendation has more importance or even if the employee does not have the ultimate decision making authority.[5] Evidence that an employee's recommendations are given particular weight could include the employee's job description, testimony

that the recommendations were made and considered, and performance reviews that show the employee's role in other Workers' promotions or other change in status.

---

[1] 29 C.F.R. § 541.100.
[2] 29 C.F.R. § 541.102.
[3] 29 C.F.R. § 541.104.
[4] 29 C.F.R. § 541.701.
[5] 29 C.F.R. § 541.105.

Administrative Employee Exemption

Reference Number: CTAS-141

To qualify for this exemption, an employee's primary duty must be the performance of work that is directly related to the management or general business operations of the employer. The exemption generally includes executive and administrative assistants, advisory specialists, and employees who are in charge of a functional department that may include only one person. To be classified as a bona fide administrative employee under the FLSA, all of the following requirements[1] must be met:

1. The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $844 per week ($43,888 per year);
2. 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
3. The employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

To meet the requirements of the exemption, the employee must perform work that is directly related to assisting with the running or servicing of the business. Work directly related to management policies or general business operations is defined under the regulations to include, but not be 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, government relations, computer network and Internet activities, legal and regulatory compliance and similar activities.[2]

The regulations set out ten factors for determining whether an employee meets the requirement that the employee exercise "discretion and independent judgment with regard to matters of significance." These factors are:

1. Whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices;
2. Whether the employee carries out major assignments in conducting the operations of the business;
3. Whether the employee performs work that affects the business operations to a substantial degree, even if the employee's assignments are related to the operation of a particular segment of the business;
4. Whether the employee has authority to commit the employer in matters that have significant financial impact;
5. Whether the employee has authority to waive or deviate from established policies and procedures without prior approval;
6. Whether the employee has authority to negotiate and bind the company on significant matters;
7. Whether the employee provides consultation or expert advice to management;
8. Whether the employee is involved in planning long- or short-term business objectives;
9. Whether the employee investigates and resolves matters of significance on behalf of management; and
10. Whether the employee represents the company in handling complaints, arbitrating

disputes, or resolving grievances[3]

The regulations also state that the "discretion and independent judgment" requirement still can be met even if their decisions are subject to review at a higher level, and even if the employee's duties consist of recommending action rather than the actual taking of action, as long as the other relevant factors warrant the conclusion. However, it must be more than the use of skill in applying well-established procedures or standards described in manuals[4] or other sources, and it does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work.[5]

---

[1] These requirements are set out in 29 C.F.R. § 541.200.
[2] 29 C.F.R. § 541.201.
[3] 29 C.F.R. § 541.202.
[4] In 29 C.F.R. § 541.704, it is noted that the use of manuals does not automatically exclude an employee from an exemption. The use of manuals, guidelines or other procedures that 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 does not affect an employee's exempt status.
[5] 29 C.F.R. § 541.202.

Professional Employee Exemption

Reference Number: CTAS-142

Generally included in this exemption are the so-called "learned professions" such as medicine, law and dentistry; artistic professions and architects; teachers and professors; engineers and scientists; registered nurses; computer programmers, computer systems analysts, and software engineers; and some accountants, depending on training and job duties.[1] To qualify for the learned professional exemption under the FLSA, all of the following requirements[2] must be met:

1. The employee must be compensated on a salary or fee basis at a rate not less than $844 per week ($43,844 per year);[3]
2. The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work that is predominantly intellectual in character and includes work requiring the consistent exercise of discretion and judgment;
3. The advanced knowledge must be in a field of science or learning; and
4. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

The regulations state that the phrase "work requiring advanced knowledge" means that it must be predominately intellectual in character which requires the exercise of discretion and judgment. The phrase "field of science or learning" includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other similar occupations that have a recognized professional status. The phrase "customarily acquired by a prolonged course of specialized intellectual instruction" restricts this exemption to professions where specialized academic training is a standard pre-requisite for entrance into the profession, or employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained their knowledge through a combination of work experience and intellectual instruction.[4]

Certified public accountants generally meet the requirements for the exemption, and many other accountants who are not CPAs but who perform similar job duties may qualify, but accounting clerks, bookkeepers and other employees who perform a great deal of routine work usually will not qualify as exempt professionals.[5]

---

[1] There is also an exemption for creative professionals such as artists, musicians, actors and writers, but since counties generally do not employ these kinds of professionals the exemption is not discussed. For more information, *see* 29 C.F.R. § 541.302.
[2] The requirements are set out in 29 C.F.R. § 541.301.

[3] These salary requirements do not apply to teachers, doctors, or lawyers. 29 C.F.R. §§ 541.303 and 541.304
[4] 29 C.F.R. § 541.301.
[5] 29 C.F.R. § 541.301(e)(5).

Computer Employee Exemption

Reference Number: CTAS-143

The regulations consolidated the requirements for certain highly-compensated computer professionals. Computer analysts, computer programmers, software engineers and other similarly skilled workers in the computer field are eligible for this exemption. To qualify for the computer professional exemption under the FLSA, the following requirements[1] must be met:

1. The employee must be compensated either on a salary or fee basis at a rate not less than $684 per week or, if compensated on an hourly basis, at a rate not less than $27.63 an hour;
2. The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
3. The employee's primary duty must consist of:
    - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
    - 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;
    - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
    - A combination of the aforementioned duties, the performance of which requires the same level of skills.

This exemption does not include employees who repair computer hardware and related equipment. Computer employees who do qualify for this exemption often have duties that would qualify them for the administrative or executive exemptions.

---

[1] The requirements are set out in 29 C.F.R. § 541.401.

Highly Compensated Worker Exemption

Reference Number: CTAS-144

The regulations create a special category of exemption for employees who earn $132,964 or more per year, known as the "highly compensated worker" rule. An employee meets this exemption if he or she meets the following requirements:[1]

1. The employee earns total annual compensation of $132,964 or more, which includes at least $844 per week paid on a salary or fee 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.

---

[1] The requirements are set out in 29 C.F.R. § 541.601.

Seasonal Recreational Employees

Reference Number: CTAS-145

Section 13(a)(3) of the FLSA provides an exemption from the minimum wage and overtime provisions of

the FLSA for "any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33-1/3 per cent of its average receipts for the other six months of such year." Receipts for this purpose are fees received from admissions. Examples of recreational or amusement establishments that may qualify for this exemption are outdoor swimming pools, golf courses and recreational parks that operate on a seasonal basis. A publicly operated amusement or recreational establishment whose operating costs are met wholly or primarily from tax funds would fail to meet the requirements of (B) above so its employees could not qualify for the exemption under that section, but the employees could qualify under (A) above if the establishment is not open more than seven months each year.

Public Safety Employees

Reference Number: CTAS-146

There is an extremely limited exemption from the overtime provisions of the FLSA for law enforcement and fire department personnel in counties that employ fewer than five full or part-time firefighters or fewer than five full or part-time law enforcement officers. All employees on the payroll must be counted, regardless of whether they are currently working, including employees on worker's compensation leave, parental leave, FMLA leave, administrative leave, etc. This exemption can apply during one week and be inapplicable during the next week.[1] See Public Safety for more details.

---

[1] See 29 U.S.C. § 213(b)(20) and 29 C.F.R. § 553.200.

Source URL: *https://www.ctas.tennessee.edu/eli/exempt-employees*