

FLSA Exemption Check List

With few exceptions, all exempt employees must meet both of 2 tests: the salary test and the duties test. The duties tests vary depending on the category of exemption.

Salary Test

- Is the employee paid a guaranteed salary of at least \$844/week after 7/1/2024, or \$1,128/week after 1/1/2025? (10% may be achieved through non-discretionary bonuses).
 - “Guaranteed”
 - Not subject to deduction for attendance, productivity
 - Can require to employee to use sick/vacation/PTO balances
 - Can deduct for full day absences for non-illness/injury personal reasons (e.g., takes 3 days off but only has 2 days vacation available)
 - If you have a bona fide sick leave or disability policy that makes up pay due to time out for illness/injury, you may deduct full day absences for illness/injury once sick leave or disability benefits are exhausted
 - Can deduct for full day absences due to disciplinary suspension imposed in good faith for violation of serious, written workplace conduct rule
 - Except for intermittent/reduced schedule FMLA leave, deductions for partial day absences are not allowed
 - Exempt Computer Employees
 - May be paid:
 - guaranteed salary of at least \$684/week, or
 - hourly rate of at least \$27.63/hour
 - See Duties Test, below, for definition of Exempt Computer Employees
 - 10% from non-discretionary bonuses
 - Bonus, incentive, or commission paid pursuant to a written plan
 - Paid at least annually
 - Catch-up payment – may make one final payment no later than the first pay period of the next year to meet the 10% if the employee unexpectedly did not earn enough in bonuses, commissions, or incentives to meet the salary test

Duties Test

There are five categories of exempt duties: executive, administrative, professional, computer and outside sales. For the County’s purposes, I assume that you don’t have any outside sales employees and won’t cover it here.

Executive Exemption

- Management: Is the employee’s primary duty managing the business, or a recognized department or subdivision of the business?
 - “Primary duty” = principal, main, major or most important duty the employee does. Factors include relative importance compared with other duties; relative amount of time spent versus other duties; relative freedom from supervision; relationship between salary and the wages paid to other employees performing similar duties.
 - Managing the business, or a recognized department or subdivision requires more than managing a group of employees assigned from time to time to do a particular job or series of jobs
 - Examples of managing, or management duties
 - Interviewing, selecting, training employees
 - Setting/adjusting rates of pay or hours of work
 - Directing the work of employees
 - Evaluating performance/productivity for recommending promotions or other changes in status
 - Handling employee complaints/grievances
 - Disciplining employees
 - Planning work/determining how work will be done/assigning work among employees
 - Determining materials, supplies, machinery, equipment or tools to be used, bought, stocked or sold
 - Controlling flow and distribution of materials, merchandise or supplies
 - Providing for safety and security of employees and/or property
 - Planning and controlling budget
 - Monitoring or implementing legal compliance requirements.
 - Note: other duties may also be indicative of management and must be evaluated on a case-by-case basis.
- Supervision: Does the employee regularly and customarily supervise two or more full-time equivalent employees?
 - Two or more full-time equivalents (FTEs)
 - At least two full-time employees
 - Any combination of full and/or part-time employees whose hours equate to two full-time employees (e.g., 4 employees who work 20 hours per week)
 - Employees supervised must be in the manager’s department.
 - Shared supervision will not count. But multiple managers within a department are fine as long as each supervises at least two FTEs.
- Authority:
 - Can the manager hire or fire other employees?
 - If not directly, are the manager’s suggestions and recommendations on hiring, firing, promotion, or other changes in status given particular weight?

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- Is it part of employee’s job to make such suggestions or recommendations?
- How often are such suggestions or recommendations made or requested?
- How often are the suggestions or recommendations followed or relied on?

Administrative Exemption

- Does the employee’s primary duty consist of office or non-manual work directly related to the management or general business operations of the employer or employer’s customers?
 - “Primary duty” = principal, main, major or most important duty the employee does. Factors include relative importance compared with other duties; relative amount of time spent versus other duties; relative freedom from supervision; relationship between salary and the wages paid to other employees performing similar duties.
 - Employee may not be a production worker, or “blue collar” employee
 - “Management or general business operations” includes but isn’t necessarily limited to work in functional areas:
 - 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
- Does the employee have a primary duty that includes the exercise of discretion or independent judgment with respect to matters of significance?
 - “Exercise of discretion or independent judgment”
 - comparing and evaluating possible courses of conduct, and
 - acting or making a decision after considering the various possibilities

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- Manuals and Standard Operating Procedures will not preclude exemption 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

Professional Exemption

- Is the employee's primary duty the performance of work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction?
 - "Primary duty" = principal, main, major or most important duty the employee does. Factors include relative importance compared with other duties; relative amount of time spent versus other duties; relative freedom from supervision; relationship between salary and the wages paid to other employees performing similar duties.
 - Does the employee consistently exercise discretion and independent judgment? That is, does the employee use his or her advanced knowledge to analyze, interpret, or make deductions from various facts and circumstances?
 - Is the work predominantly intellectual in nature?
 - Examples of field of science or learning:
 - Law
 - Medicine
 - Theology
 - Accounting (i.e., CPAs, not bookkeepers)
 - Actuarial computation
 - Engineering
 - Architecture
 - Physical/chemical/biological sciences
 - Pharmacy
 - Not mechanical arts or skilled trades
 - "Prolonged course of specialized intellectual instruction"
 - Typically requires appropriate academic degree, but can include a combination of intellectual study and work experience.
 - Typically will be found lacking in jobs where skills are acquired by experience.
 - Note: There is no salary test for doctors (physicians), lawyers, and teachers.
- Creative Professional: Is the employee's primary duty the performance of work that requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor?
 - Primary duty: see above.
 - Is the work in a field such as music, writing, acting, or graphic arts? Does the work require inventiveness, originality, and talent as opposed to work that primarily depends on intelligence, diligence, and accuracy.
 - Examples:
 - Actors

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- Cartoonists
- Painters
- Composers, conductors, musicians
- Novelists, essayists, and other writers who choose topics on their own and deliver a product to an employer or publishing house
- High-level advertising writers (but not copyists)
- Journalists (see primary duty; gathering information, investigation, and general assignment reporters do not count)

Computer Employees

- See Salary Test (above) for alternative to guaranteed salary.
- Is the employee's primary duty (any one will suffice):
 - Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications?
 - 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?
 - Design, documentation, testing, creation, or modification of computer programs related to machine operating systems?
 - Any combination of the foregoing duties, the performance of which requires the same level of skills.
- Does not include:
 - employees who manufacture or repair computer hardware or related equipment, or
 - employees whose work is highly dependent on, or facilitated by, computers or software, but who are not primarily engaged in computer systems analysis and programming, or other similarly skilled computer-related occupations from the primary duty test (above). Examples of these include engineers, drafters or others skilled in computer-aided design. Note, however, that engineers or some other similarly skilled or management-level employees may fit one of the other duties tests.

Highly Compensated Employee – short test for HCEs:

- Does the employee's total annual compensation equal or exceed \$132,964/year (beginning 7/1/2024), or \$151,164/year (beginning 1/1/2025)?
- Is the guaranteed salary portion (see Salary Test, above) at least \$844/week (7/1/2024) or \$1,128/week (1/1/2025)? The difference may be made up of bonus, incentive, and/or commission payments.
- Does the employee regularly and customarily perform one or more of the exempt management duties from the executive, administrative, or professional exemptions (above)?
- If the employee meets all three, then he or she is exempt.