

## Executive Exemption Worksheet

The information provided in these documents is not intended to be a substitute for legal or professional advice where the facts and circumstances warrant. If the user of this worksheet requires legal advice or professional services, the user should contact his own legal counsel or professional advisor to discuss the specific facts and circumstances.

The information provided in these worksheets is based on the final regulations of the FairPay Rules. For a copy of the regulations (29 CFR Part 541), visit the U.S. Department of Labor's Web site at [www.dol.gov](http://www.dol.gov). State laws may vary. Where state and federal laws differ, the law that provides greater benefits and rights to employees will prevail.

### Check all that apply:

- This position is paid on a salary basis.
- This position receives a guaranteed salary of at least \$455 each week.
- The primary duty of this position is management of the enterprise or of a customarily recognized department or subdivision.
- This position regularly directs the work of two or more employees.
- This position has the authority to hire or fire other employees, or this employee's suggestions and recommendations with respect to hiring, firing, advancement, promotion or other change of status must be given particular weight.

To qualify for the executive exemption, all of the above criteria must be satisfied,

**or**

- This person is a 20% equity owner who is actively engaged in the management of the business.\*

\* The salary level and salary basis requirements do not apply to 20% equity owners.

## Administrative Exemption Worksheet

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### Check all that apply:

- This position is paid on a [salary basis](#).
- This position receives a guaranteed salary of at least \$455 each week.
- This individual's [primary duty](#) involves office or non-manual work directly related to the [management or general business operations](#) of the employer or the employer's customers.
- The primary duty of this position requires the use of [discretion and independent judgment](#) with respect to [matters of significance](#).

To qualify for the administrative exemption, all of the above criteria must be satisfied.\*

\* Under the administrative exemption, individuals may also be paid on a "fee basis" (a lump sum for completing a single job, regardless of hours worked). However, to meet the salary level test for the exemption, the fee payment must equate to at least \$455 each week if the employee worked 40 hours.

## Learned Professional Exemption Worksheet

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### Check all that apply:

- This position is paid on a [salary basis](#).
- This position receives a guaranteed salary of at least \$455 each week.
- The [primary duty](#) of this position consists of performing work requiring [advanced knowledge](#) in a field of science or learning [customarily](#) acquired by a prolonged course of specialized intellectual instruction.

To qualify for the learned professional exemption, all of the above criteria must be satisfied.\*

\* The salary level and salary basis requirements do not apply to teachers, doctors, or lawyers (§ 541.600(e)). Under the learned professional exemption, individuals may also be paid on a "fee basis" (a lump sum for completing a single job, regardless of hours worked). However, to meet the salary level test for the exemption, the fee payment must equate to at least \$455 each week if the employee worked 40 hours.

## Creative Professional Exemption Worksheet

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### Check all that apply:

- This position is paid on a [salary basis](#).
- This position receives a guaranteed salary of at least \$455 each week.
- The [primary duty](#) of this position involves the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic endeavor (for example, music, writing, acting, and graphic arts).

To qualify for the creative professional exemption, all of the above criteria must be satisfied.\*

\* Under the creative professional exemption, individuals may also be paid on a "fee basis" (a lump sum for completing a single job, regardless of hours worked). However, to meet the salary level test for the exemption, the fee payment must equate to at least \$455 each week if the employee worked 40 hours.

## Computer Employee Exemption Worksheet

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### Check all that apply:

- This position is paid on an hourly basis of at least \$27.63 an hour,
- or**
- this position receives a guaranteed salary of at least \$455 each week.
- The primary duty of this position involves:
- the application of systems analysis techniques and procedures, including consulting with users to determine hardware and software specifications;
  - the design, development, documentation, analysis, creation, testing, or modification of computer software programs or systems;
  - the design, development, documentation, analysis, creation, testing, or modification of computer programs related to machine operating systems,
- or**
- a combination of the above duties.

To qualify for the computer employee exemption, all of the above criteria must be satisfied.

## Outside Sales Exemption Worksheet

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### Check all that apply:

- The employee's primary duty involves 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.
- The employee is customarily and regularly engaged away from the employer's place or places of business.

To qualify for the outside sales exemption, all of the above criteria must be satisfied.\*

\* Drivers who deliver products and also sell such products may qualify as an exempt outside sales employee only if the employee has the primary duty of making sales. In such cases, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including loading, driving, or delivering products, shall be regarded as exempt outside sales work (29 CFR § 541.504).

## Highly Compensated Employee Exemption Worksheet

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### Check all that apply:

- The employee receives total compensation of at least \$100,000 each year.
- The employee receives a guaranteed salary of at least \$455 each week.
- This position involves the performance of office or non-manual work.
- This employee customarily and regularly performs at least one of the exempt duties identified in the tests for the executive, administrative, or professional exemptions.

To qualify for the highly compensated employee exemption, all of the above criteria must be satisfied.

## Definitions

**Advanced knowledge** - refers to work that is predominantly intellectual in nature and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from the performance of routine mental, manual, mechanical, or physical work. Generally, the knowledge is used to analyze, interpret, or make decisions based on the facts and circumstances of a particular situation. The level of knowledge cannot be attained at the high school level.

**Customarily** - meaning the exemption may be available to such professionals who may have the same knowledge level and perform substantially the same work as degreed professionals but attained the advanced knowledge through a combination of work experience and intellectual instruction. The regulation clarifies that this particular exemption does not apply to occupations in which most employees acquire their skill by experience rather than by advanced specialized intellectual instruction.

**Discretion and independent judgment** - the employee's duties involve comparing and evaluating various courses of action and making a decision after all possibilities have been considered.

**Management or general business operations** - refers to the type of work performed by the employee. The work must be directly related to running or servicing of the business. It does not include working on a production line or selling a product. Examples of work that may relate to the management or general business operations include tax, finance, accounting, advertising, research, human resources, legal and regulatory compliance, etc.

**Matters of significance** - refers to the level of work or importance of work performed. Factors to consider include, but are not limited to, authority to develop, interpret, implement management policies or operating practices; authority to commit the employer in matters that have significant financial impact on the business; authority to deviate from pre-established policies without prior approval; providing expert advice to management; involvement in long- and short-term business planning; investigating and resolving major issues on behalf of the company; etc.

**Particular weight** - it is part of the employee's regular job duties to make suggestions. Factors to consider may include how often suggestions are given by this employee and how often the employee's suggestions are relied upon. The executive does not have to have the ultimate authority; a higher level manager can review the suggestions. Making occasional recommendations does not meet the "particular weight" standard.

**Primary duty** - the major or most important function. To help determine this, consider the amount of time spent performing the duty (for example, the primary duty requirement will generally be satisfied if more than 50% of the employee's

particular time is spent on that function. However, the regulations do not require that more than 50% of the person's time be spent performing that function).

Drivers who sell may be considered exempt. Factors to consider in determining if an employee has the **primary duty of selling** include, but are not limited to, a comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when such is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amounts of product to be delivered; description of the position in a collective bargaining agreement; the employer's specifications with respect to qualifications for hiring, sales training, and attendance at sales conferences; method of payment; and proportion of earnings attributable to sales.

**Regularly** - more than occasionally (that is, a function the employee normally does each week). It does not include isolated or one-time tasks.

**Salary basis of payment** - individual receives a predetermined amount of compensation each pay period, and such compensation may not be reduced because of variations in the quantity or quality of work performed. Certain deductions from this predetermined salary are prohibited.

**Total compensation** - includes commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned during a 52-week period. The total annual compensation does not include credit for board, lodging or other facilities, payments for medical or life insurance, or contributions to retirement plans or fringe benefits.

**Two or more employees** – full-time employees (generally defined as working 40 hours each week) or the equivalent of two full-time employees (for example, one full-time and two part-time employees who each work 20 hours each week).