

Exempt Determination Worksheet Administrative Test

Position: _____

Analysis by: _____ **Date:** _____

The Fair Labor Standards Act provides that to be exempt from overtime and minimum wage payments an employee must meet the requirements of the Executive, Administrative, Professional, Computer, Outside Sales, or Highly Compensated Exemption.

The following questions and information guide you through the analysis required to make an Administrative Exemption determination. Remember that job titles alone are not determinative. It is also helpful if your job descriptions help explain an exemption.

1. Is the employee paid on a salary or fee basis?

- No. The position does not qualify for exempt status under the FLSA. An exempt Administrative employee must be paid on a salary or fee (not hourly) basis.
- Yes. To be considered exempt under the Administrative Exemption test, an employee must be paid on a salary or fee (not hourly) basis.

2. Is the employee paid a salary or fee of at least ~~\$455/week~~ \$684/week effective 1/01/2020

- No. The position does not meet the Administrative Exemption test. To qualify for the Administrative Exemption an employee must be paid at least ~~\$455/week~~ \$684/week
- Yes. To meet the Administrative Exemption test, an employee must be paid at least ~~\$455/week~~ \$684/week

3. Does the employee have as his or her primary duty* the performance of office or non-manual work (“white collar” work) directly related to management or general business operations of the employer or the employers’ customers? Such responsibilities should significantly impact the business and may relate to analysis and drawing conclusions, not tabulations, recordkeeping, clerical work, or following well-defined instructions. Additionally, line or “product” positions are not likely to be considered exempt under this test.**

- No. This position does not meet the Administrative Exemption test. You may want to review this position under one of the other FLSA exemptions or treat the position as non-exempt.
- Yes. To support your position, provide examples of “administrative” duties and their impact below.

Describe the position's “Primary Duties”:

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How is this position directly involved with management or general business operations? (List examples below.)

Explain how these management activities are of significance or impact business operations.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

***Primary Duties Defined:** To qualify for exemption, an employee's primary duty must be the performance of exempt work. The term "primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case with an emphasis on the employee's job as a whole.

Factors to consider include, but aren't limited to, 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 to other employees for the kind of non-exempt work performed by the employee.

While an exempt employee's primary duty must be the performance of exempt work, the regulations don't require that exempt employees spend more than 50% of time performing exempt work, however other factors must clearly support the exemption. Time alone is not the sole test. However, employees who spend more than 50% of their time performing exempt work will generally satisfy the "primary duty" requirement.

Example: An assistant manager in a retail store who performs exempt executive work such as supervising and directing employees, ordering merchandise, managing the budget, and authorizing bill payments may have management as her primary duty, even if she spends more than 50% of the time performing non-exempt work such as running the cash register. However, if she is closely supervised or earns only slightly more than the non-exempt employees, the primary duty requirement would not be satisfied.

**** Directly Related to Management or Business Operations:** To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business. Such work includes, but is not limited to, work in such areas 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, public relations, government relations, computer network, internet and database administration, and legal and regulatory compliance.

4. Does the employees' primary duty include the exercise of discretion and independent judgment with respect to matters of significance?* (As distinguished from simply using routine skills, applying knowledge, performing clerical work, or following procedures?)**

- No. This position does not meet the Administrative Exemption test. You may want to review this position under one of the other FLSA exemptions or treat the position as non-exempt.
- Yes. To support your position, please provide examples of discretion and independent judgment below.

(A) List examples of where the employee regularly compares/evaluates/plans possible actions or business decisions and acts upon that analysis.

- i. _____
- ii. _____
- iii. _____
- iv. _____

(B) Discretion. List examples of significant decisions made regularly or independently acted upon that are free from immediate supervision.

- i. _____
- ii. _____
- iii. _____
- iv. _____

(C) List examples where the position has the authority/power to make independent choices, take independent actions, deviate from procedures or policies, commit the company to significant financial matters, or resolve complaints or grievances.

- i. _____
- ii. _____
- iii. _____
- iv. _____

*****Discretion and Independent Judgment Defined:** Discretion and independent judgment involves the comparison and evaluation of possible courses of conduct and acting or making a decision after considering the possibilities. Factors to consider include, but aren't limited to, whether the employee has authority to formulate, affect, interpret, or implement management or operating policies, whether the employee carries out major assignments in conducting business operations, performs work that substantially impacts the business, has authority to commit the employer regarding matters of significant financial impact, can deviate from or waive established policies or procedures without prior approval, can bind the company or negotiate regarding significant matters, provides consultation or expert advice to management, is involved in long or short term business planning, investigates and resolves significant matters, or resolves complaints or grievances.

The exercise of discretion or independent judgment implies that the employee has authority to act free from immediate direction or supervision. This does not mean that the employee has unlimited authority. Additionally, his decisions may be subject to review. However, the discretion and judgment required must be more than simply applying well-established techniques, procedures, or standards that could be outlined in manuals and cannot include clerical or secretarial work, recording or tabulating data, or performing mechanical, repetitive, recurrent, or routine work. Additionally, the requirement is not satisfied simply because the company could suffer significant financial damage if an employee performs his job improperly.

If your answers to questions 1-4 were all “yes:”

Your answers indicate that the Administrative Exemption test appears to be met.

If any of your answers to question 1-4 were “no:”

Your answers indicate that there may be a problem in meeting the requirements of the Administrative test. You may want to further review the position, gather additional information, or consider examining the position under a different exemption test.

After careful analysis and review, it appears that this position is:

Non-exempt

Exempt

Signed

Date

Position

Signed

Date

Position

This FLSA worksheet is designed for informational purposes only. The FLSA is a very technical and complicated law. Because exemptions are narrowly defined, often difficult to apply, and there are numerous exceptions, you may want to have your position classifications reviewed by an attorney. Remember, too, that your state law may impose additional requirements.