

Fair Labor Standards Act (FLSA) Overtime Regulations

CHECKLIST #1 - SALARY AND DUTIES TESTS FOR EXECUTIVE EXEMPTION FROM OVERTIME

Effective August 23, 2004

If the following four questions are all answered "yes," then the employee meets the executive exemption test.

A. Does the employee receive a salary of at least \$455 per week?

Yes _____ No _____

1. Salary means employee regularly receives a predetermined amount each pay period for work he performs any week.
2. Salary must be exclusive of board, lodging or other facilities.
3. Salary may not be subject to reductions based on variations in the quality or quantity of work (i.e., "snow" days).
4. Employee may be subject to disciplinary deductions, in full-day increments, pursuant to a written policy uniformly applied to infraction of workplace safety rules.
5. Absences of a work day or longer may result in full-day increment salary reductions if the absence is caused by personal illness or other personal reasons.
6. Deductions are unavailable for absences caused by jury duty, witness duty, or temporary military leave.
7. Salary deductions are available for absences governed by the FMLA.
8. Special treatment is available to employees who receive total annual compensation of at least \$100,000, composed of salary, incentive, and other nondiscretionary payments.

B. Is the employee's primary duty the management of a customarily recognized department or subdivision of the company?

Yes _____ No _____

1. Management duties include interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing their work; maintaining their production or sales records for use in supervision or control; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling their complaints and grievances and disciplining them when necessary; planning the work; determining the techniques to be used; proportioning the work among the employees; determining the types of materials, supplies, machinery or tools to be used, or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety of employees and property.

2. Primary duty generally means the principal or most important duty the employee performs.
3. When an employees spends less than the majority of his/her time performing management functions, he/she may still be considered an executive depending upon other factors such as:
 - a. the relative importance of the managerial duties as opposed to the other types of duties;
 - b. the frequency with which the employee exercises discretionary powers;
 - c. the employee's relative freedom from supervision; and
 - d. the relationship between the employee's salary and the wages paid to other employees who perform the same kind of non-exempt work performed by the supervisor.
4. Employee must direct a unit of employees with a permanent status-continuing function, not merely a collection of employees assigned to complete a project.
5. Consider what percentage of time employee spends performing similar duties to those completed by his subordinates. If significant administrative or professional duties are performed, consider the "combination" exemption.
6. If fewer than six subordinates are supervised, examine primary duty very closely (i.e., employee turnover, contacts with internal and external customers, maturity of functional area).

C. Do the employee's duties include the regular supervision of two or more full-time employees or the equivalent (at least 80 hours of subordinate time each week)?

Yes _____ No _____

1. Joint or shared supervision with another exempt classified employee is insufficient.
2. Supervision only in the regular manager's absence is insufficient.

D. Does the employee have the authority to hire or fire assigned employees, or at least the responsibility to effectively recommend hiring, firing, advancement, promotion, or other change in assigned employee status?

Yes _____ No _____