

## Fair Labor Standards Act (FLSA) Overtime Regulations

### CHECKLIST #3 - SALARY AND DUTIES TESTS FOR LEARNED OR CREATIVE PROFESSIONAL EXEMPTION FROM OVERTIME

Effective August 23, 2004

If questions A, B, and C, or A and D are answered “yes,” the employee meets the professional exemption test.

A. Is the employee paid a salary of at least \$455 per week?

Yes \_\_\_\_\_ No \_\_\_\_\_

Note: The same criteria for “salary,” discussed under the executive exemption, apply to the professional exemption.

B. Does the employee’s primary duty consist of the performance of work requiring knowledge of an advanced type in a field of science or learning?

Yes \_\_\_\_\_ No \_\_\_\_\_

1. Must be knowledge which cannot be attained at the high school level.
2. Knowledge must not be restricted to the mechanical arts.
3. Requisite knowledge must be customarily acquired by a prolonged course of specialized intellectual study. In some subjects, however, the specialized intellectual study may be acquired by a combination of intellectual study and work experience.
4. Professions which are covered by exemption include: law, medicine, nursing, accounting, actuarial computation, engineering, education, and various types of physical, chemical and biological sciences.
5. Primary duty generally indicates that the principal and most important part of the job is pursuing the profession.
6. When employee spends less than majority of his/her time pursuing the profession, the exemption may still be met in view of:
  - a. the relative importance of the professional 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 employee.

C. Do the employee's duties include work requiring consistent exercise of discretion and judgment?

Yes \_\_\_\_\_ No \_\_\_\_\_

1. Discretion and judgment may be:
  - a. making a decision to depart from prescribed standards or permitted tolerances;
  - b. making decisions that affect the operational policies of the employee's department;
  - c. formulating recommendations to a customer for the purchase of securities;
  - d. making decisions in connection with negotiations where the individual is given "reasonable latitude" in carrying on those discussions, which are binding on the employer;
  - e. formulating recommendations, even if management personnel must review and accept the recommendation prior to implementation;
  - f. formulating or participating in the formulation of policy for the business unit; or
  - g. broad authority to commit the employer in substantial respects financially.
2. Discretion and judgment is not:
  - a. applying knowledge, following prescribed procedures or determining which procedures to follow;
  - b. determining whether specified standards have been satisfied, even if there is some leeway in reaching a conclusion;
  - c. performing inspection functions by following established techniques and procedures with skills acquired through special training or experience;

- d. formulating recommendations based upon the development of facts concerning conformity with a known standard;
- e. comparing items based upon established standards, known through experience or written manuals;
- f. screening applicants or conducting interviews to determine satisfaction of certain minimum qualifications; or
- g. making decisions that do not commit the employer in substantial respects financially or otherwise.

D. Do the employee's primary duties consist of activities requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor?

Yes \_\_\_\_\_ No \_\_\_\_\_

1. A recognized field of artistic or creative endeavor includes music, writing, acting, and the graphic arts. The work requires intelligence, diligence and accuracy with the individual having broad leeway to develop an original work product.
2. The exemption turns upon the constraints placed on the employee. Positions that primarily require fact gathering and reporting, and not creative or original analysis and interpretation, do not satisfy the standard.
3. Positions that limit the employee's latitude, in terms of controlling the final work product, are also vulnerable to successful challenge.