
AN IN-DEPTH REVIEW AND ANALYSIS OF THE NEW OVERTIME REGULATIONS

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I. INTRODUCTION

The Federal Fair Labor Standards Act (“FLSA”) and Connecticut’s wage payment laws require that all employees must be paid for all hours worked. The two primary approaches to paying wages are the hourly and salary payment methods. Under both federal and state law, an employer must pay an employee at least the minimum wage for every hour worked, and overtime (e.g., time and one-half) for all hours over 40 in a workweek if the employee is “non-exempt.” Generally speaking, entry-level to mid level workers paid hourly are “non-exempt” employees. Mid to higher-level workers who meet specific requirements regarding their duties, and who are paid on a salary basis, are referred to as “exempt” employees. An employer is not required to pay overtime to such “exempt” workers.

On April 23, 2004, the United States Department of Labor (“DOL”) issued new regulations under the FLSA, known as the FairPay Rule, significantly revising the standards for determining whether an employee is “non-exempt” and eligible for overtime pay under federal law or whether an employee qualifies as “exempt” from overtime payments. These long-awaited changes to the FLSA, which took effect as of August 23, 2004, will require employers to thoroughly review the exemption status of their employees and to possibly re-classify certain employees as a result of the new overtime standards.

Among other things, the new rules are very clear that: (1) all employees who are paid by the hour are entitled to overtime; (2) all “blue-collar” and manual laborers are entitled to overtime; (3) all salaried workers earning less than \$23,660 annually are entitled to overtime -- regardless of job title or duties; and (4) any salaried worker earning more than \$23,660 annually must be paid overtime unless they perform duties that qualify under an applicable exemption.

II. COMPARISON OF CURRENT AND NEW “SALARY” TEST REGULATIONS

CURRENT REGULATIONS	NEW REGULATIONS [CHANGES IN BOLD]
<ul style="list-style-type: none"> • To qualify for exemption (in addition to satisfying duties test), employee must be paid at least \$155 per week (\$8,060 annually) on a salary basis. • Being paid on a salary basis means an employee regularly receives a predetermined amount of compensation each pay period on a weekly (or less frequent basis), regardless of variations in the quality or quantity of the employee’s work. • Subject to limited exceptions, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. • Exempt employees need not be paid for any workweek in which they perform no work. • Pay deductions in <u>full day</u> increments for exempt employees are permissible as follows: <ul style="list-style-type: none"> (1) If the employee is absent from work for one or more full days for personal reasons, other than sickness or disability; (2) If the employee’s absence is caused by sickness or disability, provided that such deductions are made pursuant to an employer policy or practice of making such deductions after sickness or disability leave has been exhausted; 	<ul style="list-style-type: none"> • To qualify for exemption (in addition to satisfying duties test), employee must be paid at least \$455 per week (\$23,660 annually) on a salary basis. • Being paid on a salary basis means an employee regularly receives a predetermined amount of compensation each pay period on a weekly (or less frequent basis), regardless of variations in the quality or quantity of the employee’s work. • Subject to limited exceptions, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. • Exempt employees need not be paid for any workweek in which they perform no work. • Pay deductions in <u>full day</u> increments for exempt employees are permissible as follows: <ul style="list-style-type: none"> (1) If the employee is absent from work for one or more full days for personal reasons, other than sickness or disability; (2) If the employee’s absence is caused by sickness or disability, provided that such deductions are made pursuant to an employer policy or practice of making such deductions after sickness or disability leave has been exhausted;

<p>NOTE: An employer is also allowed to reduce an employee's accrued leave benefits for the time the employee is absent from work, provided that the employer does not reduce the employee's wages for partial day absences even after the benefits are exhausted;</p> <p>(3) If the employee is absent from work as a result of a disciplinary suspension for violating a safety rule of major significance (such as those related to the prevention of serious danger to the employer's premises or to other employees).</p> <ul style="list-style-type: none"> • Pay deductions in <u>increments of less than a full day</u> are allowed as follows: <p>(1) During the first and last week of an individual's employment, an employer may pay a proportionate part of an employee's salary, limited to the time the employee actually works in those weeks;</p> <p>(2) An employer may make deductions in partial-day increments from an exempt employee's pay for absences that qualify as leave under the Federal or State Family Medical Leave Acts;</p> <p>(3) An employer may offset from salary any amounts received by the employee for jury duty, witness fees or for military service.</p> 	<p>NOTE: An employer is also allowed to reduce an employee's accrued leave benefits for the time the employee is absent from work, provided that the employer does not reduce the employee's wages for partial day absences even after the benefits are exhausted;</p> <p>(3) If the employee is absent from work as a result of a disciplinary suspension for violating a safety rule of major significance (such as those related to the prevention of serious danger to the employer's premises or to other employees);</p> <p>(4) If the employee is absent from work as a result of a disciplinary suspension for violating workplace conduct rules. [NOTE: Under Connecticut law, pay deductions of less than a full-week for workplace rule violations remain impermissible]</p> <ul style="list-style-type: none"> • Pay deductions in <u>increments of less than a full day</u> are allowed as follows: <p>(1) During the first and last week of an individual's employment, an employer may pay a proportionate part of an employee's salary, limited to the time the employee actually works in those weeks;</p> <p>(2) An employer may make deductions in partial-day increments from an exempt employee's pay for absences that qualify as leave under the Federal or State Family Medical Leave Acts;</p> <p>(3) An employer may offset from salary any amounts received by the employee for jury duty, witness fees or for military service.</p>
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- An employer loses exempt status if it has an actual practice of making improper deductions from salary.
- If there is an improper practice of deductions, exemption is lost during the time period in which the improper deductions were made for all employees in that job group, regardless of whether they were properly paid on a salary basis.

- An employer loses exempt status if it has an actual practice of making improper deductions from salary.
- If there is an improper practice of deductions, exemption is lost during the time period in which the improper deductions were made **only for the employee or employees in the same job classification working for the same manager(s) responsible for the actual improper deductions. Employees in different job classifications or who work for different managers do not lose their status as exempt employees.**
- **Isolated or inadvertent improper deductions will not result in loss of the exemption if the employer reimburses the employee for the improper deductions.**
- **If an employer: (1) has a clearly communicated policy (i.e., in writing and distributed to the employee at time of hire, in a handbook or on the employef’s intranet) prohibiting improper deductions which includes a complaint mechanism; (2) reimburses employees for any improper deductions as result of such policy and complaint; and (3) makes a good faith commitment to comply in the future, the employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing the improper deductions after receiving employee complaints.**

Reference: 29 C.F.R. § 541.600 - 603

III. COMPARISON OF CURRENT AND NEW “DUTIES” TEST REGULATIONS

EXECUTIVE EMPLOYEE DUTIES TEST (29 C.F.R. §§ 541.100 - 106)

<p align="center">CURRENT REGULATIONS (Short Test)</p>	<p align="center">NEW REGULATIONS [CHANGES IN BOLD]</p>
<ul style="list-style-type: none"> • Primary duty consists of management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; and • Customarily and regularly directs the work of two or more other employees. 	<ul style="list-style-type: none"> • Primary duty is management of enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; • Customarily and regularly directs the work of two or more other employees; and • Has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight. • Special Rule for 20% Equity Owners of Business: Exempt if ownership interest is genuine and if actively engaged in management. \$455 weekly salary threshold inapplicable.

ADMINISTRATIVE EMPLOYEE DUTIES TEST (29 C.F.R. §§ 541.200 - 204)

<p align="center">CURRENT REGULATIONS (Short Test)</p>	<p align="center">NEW REGULATIONS [CHANGES IN BOLD]</p>
<ul style="list-style-type: none"> • Primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of the employer or the employer’s customers; and • Includes work requiring the exercise of discretion and independent judgment. 	<ul style="list-style-type: none"> • Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and • Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

PROFESSIONAL EMPLOYEE DUTIES TEST (29 C.F.R. §§ 541.300 - 304)

CURRENT REGULATIONS (Short Test)	NEW REGULATIONS [CHANGES IN BOLD]
<ul style="list-style-type: none"> • Primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study; and • Includes work requiring the consistent exercise of discretion and judgment; or • Primary duty consists of the performance of work requiring invention, imagination, or talent in a recognized field of artistic endeavor. 	<ul style="list-style-type: none"> • Primary duty is the performance of work requiring knowledge of an advance type (defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment) in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or • Primary duty is the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

HIGHLY COMPENSATED EMPLOYEE DUTIES TEST (29 C.F.R. § 541.600)

CURRENT REGULATIONS	NEW REGULATIONS [CHANGES IN BOLD]
	<ul style="list-style-type: none"> • Must receive annual compensation of \$100,000 or more (which includes at least \$455 per week); • Primary duty includes performing office or non-manual work; and • Customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

IV. SUMMARY AND REVIEW OF NEW ELIGIBILITY REQUIREMENTS FOR EXECUTIVE, ADMINISTRATIVE AND PROFESSIONAL EXEMPTIONS

A. In General

1. Exemptions are narrowly construed.
2. Start with presumption of non-exempt status.
3. Burden of proof is on employer to demonstrate that exemption is available.
4. Job titles not controlling; actual job duties are the key.
5. Salaried pay status is not enough to qualify for exemption.

B. Executive Employees

1. An employee will qualify as an exempt executive if:
 - a. Employee receives salary of at least \$455.00 per week;
 - b. Primary duty is management of the enterprise or a customarily recognized department or subdivision thereof;
 - c. Employee customarily and regularly directs the work of at least two employees or equivalent (i.e., four half-time employees, or four full-time employees supervised in part by two different employees); and
 - d. Employee has the authority to hire and fire other employees, or the employee's suggestions and recommendations as to hiring, firing or any other change of employee status (e.g., promotion, demotion, etc.) are given particular weight.

Reference: 29 C.F.R. § 541.100

2. Primary Duty: Defined as the principal, main, major or most important duty that the employee performs. Factors to consider when determining the primary duty of an employee (under all exemptions) include:
 - a. Relative importance of exempt duties as compared with other types of duties;

- b. Amount of time spent performing exempt work (employees who spend more than 50% of their time performing exempt work will generally satisfy primary duty requirement. However, time alone is not the sole test and employees are not required to spend more than 50% of their time performing exempt work to be exempt);
- c. Relative freedom of employee from direct supervision; and
- d. Relationship between the employee's salary and the wages paid to other employees for any nonexempt work performed by the claimed exempt employee.

Example: Assistant manager in retail establishment who performs exempt work (supervising and directing the work of other employees; ordering merchandise; managing the budget; and authorizing payment of bills) may have management as his or her primary duty even if s/he spends more than 50% of the time performing nonexempt work such as running the cash register, unless assistant manager is closely supervised and earns little more than non-exempt employees.

Reference: 29 C.F.R. § 541.700

- 3. Management: Generally, management includes activities such as:
 - a. interviewing, selecting and training of employees;
 - b. setting and adjusting rates of pay and hours of work;
 - c. directing the work of employees;
 - d. appraising employees' productivity and efficiency for purposes of recommending promotions or other changes in status;
 - e. handling employee complaints and grievances;
 - f. disciplining employees;
 - g. planning the work or determining techniques to be used;
 - h. determining materials, supplies, equipment, and tools to be bought, stocked and sold;
 - i. controlling flow and distribution of materials or merchandise and supplies;

- j. providing for safety and security of employees or property;
- k. planning and controlling the budget; and
- l. monitoring or implementing legal compliance measures

Reference: 29 C.F.R. § 541.102

- 4. Department or Subdivision: Defined as a unit of employees with a permanent status and function (e.g., the human resources department). Does not include group of employees assigned from time to time to a specific job or series of jobs.

Reference: 29 C.F.R. § 541.103

- 5. Customarily and Regularly: Means greater than occasional but less than constant. Includes work normally done every workweek. Does not include isolated or one-time tasks.

Reference: 29 C.F.R. § 541.701

- 6. Particular Weight: Factors to consider when determining whether employee's suggestions and recommendations are given particular weight as to hiring, firing or other employee status changes include:
 - a. Whether it is the employee's job duties to make such recommendations;
 - b. The frequency with which such recommendations are made;
 - c. The frequency with which such recommendations are relied upon (although employee need not have authority to make ultimate decision); and
 - d. Whether the recommendations are made about employees whom the employee customarily and regularly directs.

Reference: 29 C.F.R. § 541.105

- 7. Concurrent Duties: Performing exempt and nonexempt duties concurrently will not disqualify an employee from the executive exemption if the other exemption requirements are satisfied.

- a. Generally, exempt executive makes decision regarding when to perform nonexempt duties and remains responsible for success/failure of business operations under his/her management, even while performing nonexempt work.
- b. Generally, nonexempt employee is directed by a supervisor to perform the exempt work or performs the exempt work for defined time periods (e.g., while executive is out of the office).

Reference: 29 C.F.R. § 541.106

8. Special Rule For Business Owners: An employee who owns at least 20% equity interest in the enterprise in which s/he is employed, regardless of the type of business organization (e.g., corporation, partnership or other), will be considered an exempt executive employee if:
 - a. The ownership interest is “bona fide” (e.g., not illusory); and
 - b. The employee is actively engaged in management of business.

If qualified as “Business Owner,” no requirement for \$455 weekly salary.

Reference: 29 C.F.R. § 541.101

9. Key phrases for job descriptions of exempt executive employees:
 - manages or supervises (more than 2; multiple) employees
 - performs tasks without supervision/works independently
 - uses initiative
 - interviews, selects and trains employees
 - sets/adjusts rates of pay and work schedules
 - maintains production/sales records
 - appraises productivity/efficiency or issues performance evaluations
 - recommends raises/promotions
 - disciplines subordinates
 - handles subordinates’ complaints

- assigns/directs work of subordinates
- determines materials/supplies to be used or purchased
- provides for safety of subordinates
- plans work or projects
- forecasts needs/determines requirements
- analyzes work requirements/alternative course of action
- coordinates or prioritizes work

C. Administrative Employees

1. An individual will qualify as an exempt administrative employee if:
 - a. Employee receives salary of at least \$455.00 per week;
 - b. Primary duty is performance of office or non-manual work directly related to management or general business operations of the employer or the employer's customers; and
 - c. Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance;

Reference: 29 C.F.R. § 541.200

2. Primary Duty: Same definition as under executive exemption (see above).
3. Office or Non-Manual Work: All of the exemptions (including the administrative exemption) apply only to "white collar" workers who meet the salary and duties tests. The overtime exemptions do not apply to manual laborers or other "blue collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. Non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, plumbers, iron workers, craftsmen, operating engineers are not exempt, no matter how highly paid they might be. First responders, including police officers & detectives, correctional officers, parole or probation officers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers and hazardous materials workers are not exempt, regardless of rank or pay level.

Reference: 29 C.F.R. § 541.3

4. Directly Related to Management or General Business Operations: An employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment. Work “directly related to management or general business operations” includes work in functional areas such as:
- a. taxes;
 - b. finance;
 - c. accounting;
 - d. budgeting;
 - e. auditing;
 - f. insurance;
 - g. quality control;
 - h. purchasing;
 - i. procurement;
 - j. advertising;
 - k. marketing;
 - l. research;
 - m. safety and health;
 - n. personnel management/human resources;
 - o. employee benefits;
 - p. labor relations;
 - q. computer network, Internet and database administration;
 - r. public or government relations;
 - s. legal and regulatory compliance; and

- t. work directly related to the management or general business operations of the employer's customers (e.g., acting as advisers or consultants to their employer's customers or clients as tax experts or financial consultants).

Reference: 29 C.F.R. § 541.201

- 5. Discretion and Independent Judgment: In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term implies that the employee has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. The fact that an employee's decisions are revised or reviewed or simply consist of recommendations for action rather than the actual taking of action does not mean that the employee is not exercising discretion and independent judgment. Factors to consider include:
 - a. Whether the employee has authority to formulate, affect, interpret or implement management policies or operating practices;
 - b. Whether the employee carries out major assignments in conducting the operations of the business;
 - c. Whether the employee performs work that affects business operations to a substantial degree, even if the assignments are only related to a particular segment of the business;
 - d. Whether the employee has authority to commit the employer in matters that have significant financial impact;
 - e. Whether the employee has authority to waive or deviate from established policies and procedures without prior approval;
 - f. Whether the employee has authority to negotiate and bind the company on significant matters;
 - g. Whether the employee provides consultation or expert advice to management;
 - h. Whether the employee is involved in planning long or short-term business objectives;

- i. Whether the employee investigates and resolves matters of significance on behalf of management;
- j. Whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances; and
- k. Whether the employee's duties require more than simply skill in applying well-established techniques, procedures or specific standards described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances. [NOTE: The use of manuals, guidelines or other established procedures containing or relating 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 would not preclude exemption].

Reference: 29 C.F.R. §§ 541.202; 541.704

6. Matters of Significance: Refers to the level of importance or consequence of the work performed. An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly (i.e., a messenger entrusted with large sums of money does not exercise discretion and independent judgment with respect to matters of significance even though the employer will be financially harmed if the messenger loses the money). Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because inattentiveness to the machine may cause serious financial loss to the employer. Further, the exercise of discretion and independent judgment does not include clerical or secretarial work, recording or tabulating data (even if employee is labeled as a "statistician") or performing other mechanical, repetitive, recurrent or routine work.

Reference: 29 C.F.R. § 541.202

7. Sample Jobs Which Qualify for Administrative Exemption:
- a. Insurance claims adjusters (if duties involve activities such as interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation);
 - b. Financial services industry employees (if duties include collecting and analyzing information regarding the customer's income, assets, investments or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing or promoting the employer's financial products). [NOTE: If the employee's primary duty is selling financial products, the exemption is not available];
 - c. Employee who leads a team of other employees assigned to complete major projects for the employer (such as purchasing, selling or closing all or part of the business, or designing and implementing productivity improvements);
 - d. Executive assistant or administrative assistant to a business owner or senior executive of a large business (if without specific instructions or prescribed procedures the assistant has been delegated authority regarding matters of significance);
 - e. Human resource managers who formulate, interpret or implement employment policies and management consultants who study the operation of a business and propose changes [NOTE: Personnel clerks who "screen" applicants to obtain data regarding their qualifications/fitness for employment are generally non-exempt];
 - f. Purchasing agents with authority to bind the company on significant purchases (even if they must consult with top management officials when making a purchase commitment for materials in excess of the contemplated plant needs);

Reference: 29 C.F.R. §541.203

8. Sample Jobs Which Do **Not** Qualify for Administrative Exemption:
- a. Inspectors doing ordinary inspection work along standardized lines involving well-established techniques and procedures;
 - b. Examiners or graders (comparing products with established standards which are frequently catalogued);
 - c. Comparison shoppers in retail stores who report to buyer the prices at a competitor's store [NOTE: The buyer who evaluates the reports on competitor's prices would ordinarily qualify as exempt];
 - d. Public sector inspectors or investigators of various types (such as fire prevention or safety; buildings or construction; health or sanitation; environmental).

Reference: 29 C.F.R. §541.203

9. Educational Establishments: An employee who performs administrative functions directly related to academic instruction/training in an educational establishment (i.e., elementary or secondary school, institution of higher education) will qualify as an exempt administrative employee if:
- a. Employee receives salary of at least \$455.00 per week;
 - b. Primary duty is performance of operations directly in the field of education (i.e., superintendent or other head of an elementary or secondary school system; any assistants responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students; establishing and maintaining academic and grading standards or other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school or schools for mentally or physically disabled or gifted children; department heads in institutions of higher education responsible for the various subject matter departments; and academic counselors).

Jobs relating to areas outside the education field, building management and maintenance, or to the health of the students (such as staff social workers, psychologists, lunch room managers or dieticians) do not perform academic administrative functions and do not qualify under the specialized educational establishment exemption.

Reference: 29 C.F.R. § 541.204

10. Key phrases for job descriptions of exempt administrative employees:
- exercises independent discretion or judgment in
 - exercises initiative in
 - Primary duty/key responsibility is making decisions or recommendations affecting the following management policies/business operations
 - advises management
 - investigates and resolves the following significant matters
 - forecasts needs
 - plans requirements or projects
 - recommends purchases, strategies, programs, asset dispositions
 - recommends/formulates policies and procedures
 - develops programs, policies, methods or procedures
 - analyzes alternative courses of action, alternative proposals
 - represents the company in handling complaints, arbitrating disputes or resolving grievances
 - works independently/without immediate supervision

D. Professional Employees

1. An individual will qualify as an exempt **learned** professional employee if:
 - a. Employee receives salary of at least \$455.00 per week;
 - b. Primary duty is the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; and
 - c. Primary duty must be the performance of work requiring the consistent exercise of judgment and discretion.

Reference: 29 C.F.R. § 541.300

2. Primary Duty: Same definition as under executive exemption (see above).
3. Work Requiring Advanced Knowledge: Means work which is predominantly intellectual in character as distinguished from work involving routine mental, manual, mechanical or physical work. A professional employee generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level. [NOTE: Scientists and other learned professional do not become non-exempt if they use manuals that provide general guidance on addressing open-ended questions or novel circumstances, as distinguished from directions on routine and recurring circumstances].

Reference: 29 C.F.R. § 541.301

4. Field of Science or Learning: Includes law; medicine; theology; accounting; actuarial computation; engineering; architecture; teaching; various types of physical, chemical or biological sciences; pharmacy; and other occupations that have a recognized professional status. Does not include the mechanical arts or skilled trades.

Reference: 29 C.F.R. § 541.301

5. Customarily Acquired by a Prolonged Course of Specialized Intellectual Instruction: Exemption is restricted to professions where specialized academic training is a standard pre-requisite for entrance into profession. Best evidence of meeting requirement is appropriate academic degree. Employees who perform same work as degreed employees but who attained advanced knowledge through combination of work experience and intellectual instruction may also qualify for exemption. Exemption does not apply to occupations in which most employees acquire their skill

be experience rather than by advanced specialized intellectual instruction. Military training does not satisfy requirements of professional exemption.

Reference: 29 C.F.R. § 541.301

6. Sample Jobs Which Qualify for Learned Professional Exemption:

- a. Registered or Certified Medical Technologists (such as ultrasound technologists; licensed veterinary technicians and avionics technicians)
[NOTE: Engineering technicians generally do not qualify for the learned professional exemption];
- b. Registered Nurses (unless paid on an hourly basis)
[NOTE: Licensed practical nurses and other similar health care employees generally do not qualify for the learned professional exemption];
- c. Dental Hygienists;
- d. Physician Assistants;
- e. Certified Accountants (or other accountants who perform similar job duties as certified accountants)
[NOTE: Accounting clerks and bookkeepers generally do not qualify for the learned professional exemption];
- f. Executive and Sous Chefs
[NOTE: Cooks generally do not qualify for the learned professional exemption];
- g. Certified Athletic Trainers;
- h. Licensed Funeral Directors/Embalmers;
- i. Lawyers or Doctors (including general practitioners; specialists; podiatrists; dentists; optometrists; and residents and interns) holding a valid license or certificate to practice if actually engaged in such a practice
[NOTE: Lawyers and doctors do not need to meet salary test to qualify for professional exemption]
[NOTE: Paralegals and legal assistants generally do not qualify for the learned professional exemption].

- j. Teachers employed in an educational establishment (including regular academic teachers; teachers of kindergarten or nursery school students; teachers of gifted or disabled children; teachers of skilled and semiskilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music teachers) [NOTE: Teachers who possess a teaching certificate qualify for the exemption but possession of teaching certificate may not be necessary under some circumstances -- e.g., private school teacher -- to qualify for exemption] [NOTE: Teachers do not need to meet salary test to qualify for professional exemption];

Reference: 29 C.F.R. §§ 541.301; 541.303; 541.304

- 7. An individual will qualify as an exempt **creative** professional employee if:
 - a. Employee receives salary of at least \$455.00 per week; and
 - b. Primary duty is the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor (such as music, writing, acting and the graphic arts).

Reference: 29 C.F.R. § 541.302

- 8. Invention, Imagination, Originality or Talent: Does not apply where work is primarily dependent upon intelligence, diligence and accuracy or routine, mental, manual, mechanical or physical work. This requirement is generally met by: actors; musicians; composers; painters who at most are given subject matter of painting; writers; cartoonists; and novelists. Journalists may be exempt if their primary duty is performing on the air in radio, television or other electronic media; conducting investigative interviews; analyzing or interpreting public events; writing editorials; or acting as narrator or moderator. Journalists are not exempt if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product, or if their work is subject to substantial control by the employer.

Reference: 29 C.F.R. § 541.302

9. Key phrases for job descriptions of exempt professional employees:
- applies professional training and experience to achieve maximum results
 - uses independent judgment or discretion
 - analyzes information, data, alternatives
 - makes recommendations
 - draws conclusions
 - interprets information, data
 - deducts
 - plans projects, work requirements
 - forecasts work needs, work requirements

V. **SUMMARY AND REVIEW OF ELIGIBILITY REQUIRMENTS FOR COMPUTER PROFESSIONAL AND OUTSIDE SALES EXEMPTIONS**

A. **Computer Professional Exemption**¹

1. An employee will qualify as an exempt computer professional if:
 - a. Employee receives either a salary of at least \$455.00 per week or is compensated on an hourly basis at a rate not less than \$27.63 an hour;
 - b. Employee is employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below; and
 - c. Primary duty consists of:
 - i. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - ii. The design, development, analysis, creation, testing or modification of computer systems or programs (including prototypes) based on and related to user or system design specifications;
 - iii. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - iv. A combination of the aforementioned duties.

Reference: 29 C.F.R. § 541.400

2. **Computer Manufacture or Repair:** Employees engaged in the manufacture or repair of computer hardware and related equipment do not qualify for the computer professional exemption. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software) but who are not primarily engaged in computer systems analysis and programming do not qualify for the computer professional exemption.

Reference: 29 C.F.R. § 541.401

¹ **NOTE:** Connecticut's overtime laws do not contain any exemption for computer professionals.

B. Outside Sales Exemption

1. An employee will qualify as an exempt outside salesperson if:
 - a. Primary duty is making 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; and
 - b. Employee is customarily and regularly engaged away from the employer's place(s) of business.

NOTE: No minimum salary required to satisfy test for outside sales exemption.

Reference: 29 C.F.R. § 541.500

2. Primary Duty: Same definition as under executive exemption (see above). In determining primary duty, incidental work (such as incidental deliveries and collections) and other work that furthers the employee's sales efforts (such as writing sales reports, updating or revising the employee's sales or display catalogue, planning itineraries and attending sales conferences) shall qualify as exempt sales work.

Reference: 29 C.F.R. § 541.500

3. Sales: Includes any sale, exchange, contract to sell, consignment for sales, shipment for sale, or transfer of title to tangible property.

Reference: 29 C.F.R. § 541.501

4. Obtaining Orders or Contracts for Services of Use of Facilities: Includes selling of time on radio or television, solicitation of advertising for newspapers and other periodicals and the solicitation of freight for transportation agencies. The word "services" extends the exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

Reference: 29 C.F.R. § 541.501

5. Customarily and Regularly: Same definition as under executive exemption (see above).

6. Away from Employer's Place of Business: An outside sales employee makes sales at the customer's place of business (or if selling door-to-door at the customer's home). Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. However, an outside sales employee does not lose the exemption by displaying samples in hotel rooms during trips from city to city or at a limited duration trade show (e.g., one or two weeks).

Reference: 29 C.F.R. § 541.502

7. Promotion Work: Promotional work that is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is exempt work. Promotional work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work.

Example: A manufacturer's representative who performs promotional activities (such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise) would be performing exempt work if the employee's primary duty is making sales and contracts and the promotional activities were performed to advance the employee's own sales.

Example: A company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock, sets up displays and consults with the store manager when inventory runs low but does not obtain a commitment for additional purchases would not be performing promotional activities incidental to exempt sales work.

Reference: 29 C.F.R. § 541.503

8. Drivers: Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. Factors to consider when determining whether a driver has a primary duty of making sales include:
 - a. Comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons;
 - b. Presence or absence of customary or contractual arrangements concerning amounts of products to be delivered;

- c. Whether the driver possesses any selling or solicitor's licenses required by applicable state law;
- d. The employer's specifications as to qualifications for hiring;
- e. Extent of attendance at sales conferences and/or sales training;
- f. Proportion of earnings directly attributable to sales.

Reference: 29 C.F.R. § 541.504

9. Examples of Drivers Who Qualify For Outside Sales Exemption:

- a. A driver who provides the only sales contact between the employer and the customers visited, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or obtains and delivers the product to the customer on a later trip, and who receives compensation tied to the volume of products sold;
- b. A driver who obtains/solicits orders for the employer's products from persons with authority to commit the customer for purchases;
- c. A driver who calls on new prospects for customers along the driver's route and attempts to convince them to accept regular delivery of goods; and
- d. A driver who calls on established customers along the route and persuades them to accept delivery of increased amounts of goods or new products (even if the initial sale or agreement for delivery was made by someone else).

Reference: 29 C.F.R. § 541.504

10. Examples of Drivers Who Do **Not** Qualify For Outside Sales Exemption:

- a. A driver whose primary duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition and in good locations; and
- b. A driver who calls on established customers day after day or week after week by delivering a quantity of the employer's products determined by the volume of the customer's sales since the previous delivery.

Reference: 29 C.F.R. § 541.504

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