



California State University
Office of the Chancellor

**The Fair Labor Standards Act (FLSA):
White Collar Exemption Guidelines**

Human Resources Administration
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**The FLSA and White Collar Exemption Guidelines
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Brief Summary of the FLSA and Key Provisions

In 1938, Congress enacted the Fair Labor Standards Act (FLSA), which established laws covering minimum wage, overtime, record keeping, and child labor. The FLSA requires that non-exempt employees be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. A summary of each key provision is provided below:

Minimum Wage

Refer to the U. S. Department of Labor (DOL) Wage and Hour Division Web site for current minimum wage information: <http://www.dol.gov/whd/minimumwage.htm>.

Overtime

Employers are required to pay non-exempt employees time-and-a-half of their “regular rate of pay” for hours worked over 40 in a workweek.¹ Regular rate of pay includes supplementary earnings such as shift differentials and non-discretionary bonuses. For more information regarding overtime, refer to Systemwide Human Resources’ FLSA Web site at: <http://www.calstate.edu/HRAdm/Policies/flsa.shtml>.

Record-keeping

Employers are required to keep certain records for non-exempt employees. There is no required form for the records, but the records must include accurate information about the employee and data about the hours worked and wages earned. The following is a listing of the basic records that an employer must maintain:

- Employee's full name and social security number.
- Address, including zip code.
- Birth date, if younger than 19.
- Sex and occupation.
- Time and day of week when employee's workweek and/or workperiod begins and ends.
- Hours worked each day and total hours worked each workweek/workperiod.
- Regular hourly pay rate, including the basis on which employee's wages are paid.
- Total daily or weekly straight-time earnings.
- Total overtime earnings for the workweek.
- All additions to or deductions from the employee's wages.
- Total wages paid each pay period.
- Date of payment and the pay period covered by the payment.

Child Labor

The FLSA provides restrictions regarding age, hours of work, and type of work that apply to the employment of minors. For more information, refer to CSU’s policy on the Employment of Minors.

¹ Different rules may apply for employees who are on alternate work schedules or who have “work periods” other than 40 hours.

The FLSA: Brief Exemption Test Overview

The FLSA is enforced by the U.S. Department of Labor (DOL), Wage and Hour Division. In order to be exempt from the FLSA provisions, the following three tests must be met except where otherwise noted:

- **Salary Level Test of \$455 Per Week or \$1972 Per Month** (certain exceptions apply)
- **Must Be Paid on a Salary Basis/Fee Basis** (certain exceptions apply)
- **Must Pass One of the Standard Duties Tests:** Executive, Administrative, Professional (creative, learned and computer professionals), and Outside Sales.

In addition, special consideration should be given to the **Highly Compensated Employee** exemption.

Non-Exempt

Non-exempt employees are subject to the minimum wage and overtime provisions of the FLSA. Work hours must be tracked and maintained, pursuant to the FLSA's record-keeping requirements. The employee must be paid overtime for any hours worked over 40 in a workweek. Refer to CSU's guidelines on the FLSA and Time & Attendance for more information on overtime, compensatory time off, and time-keeping requirements for non-exempt employees.

Exempt

Exempt employees are not subject to the minimum wage and overtime provisions of the FLSA and are not eligible for overtime or compensatory time off.² To be exempt, the employee's position and employment provisions must pass the following tests: Salary Level, Salary Basis and Standard Duties tests. Refer to CSU's guidelines on the FLSA and Time & Attendance for information on overtime, compensatory time off, and time-keeping considerations for exempt employees.

Other Exemptions

Certain classifications of agricultural workers and firefighters in the California State University are classified as "exempt," but are subject to special provisions of the FLSA due to the nature of the work performed.

- Agricultural employees in specified CSU classifications are exempt from the minimum wage and overtime provisions of the FLSA, but can earn and be paid compensatory time off, as provided in the CSU/CSEA collective bargaining agreement, Appendix C.
- Firefighter employees are subject to special provisions regarding allowable workweek calculations under the FLSA. Refer to Appendix C of the CSU/CSEA collective bargaining agreement.

² Some collective bargaining agreements allow for certain "exempt" employees to earn and be paid CTO.

Salary-Related Exemption Tests

Salary Level Test

To be exempt under the Salary Level test, the employee's actual salary must be a minimum of \$455 per week. "Salary" takes into consideration the employee's timebase as follows:

$$\text{Salary} = \text{Timebase} * \text{Full-time Base Pay}$$

The employee may be paid on a less frequent basis than a week (e.g., annual, monthly, bimonthly); however, the salary must equate to \$455 per week as outlined below:

$$\text{Annual equivalent} = \$23,660$$

$$\text{Monthly equivalent} = \$1,972$$

Important Notes:

- The Salary Level test does not apply to lawyers, doctors, "teachers" as defined by the FLSA, outside sales employees, and certain computer-related professionals paid at least \$27.63 per hour.³ Doctors include all Unit 1 employees. "Teachers" include instructional faculty, lecturers, head coaches, and teaching associates. Certain librarians, student service professionals (academic-related), and coaches may qualify for the "teacher" exemption under the FLSA; however, the exemption status must be reviewed on a case-by-case basis, based on the employee's specific duties and responsibilities.
- The salary ranges for all exempt CSU classifications and skill levels meet the Salary Level test for full-time employees.
- Special consideration should be given to part-time employees in exempt classifications. If, due to the part-time status, the employee's actual salary (Base Pay * Timebase) falls below the \$455 per week threshold (or \$1972 per month), the employee is considered non-exempt under the FLSA; therefore, work hours must be tracked and the employee is eligible for overtime in the event s/he works over 40 hours in a workweek.⁴ However, the employee remains in the exempt classification.

***EXAMPLE:** A campus hires a Custodial supervisor (MPP Administrator I) whose primary duty is to manage the custodial operations of a campus. His scope of work meets the "Executive" Standard Duties test. He is paid a flat amount on a monthly basis so he meets the Salary Basis test. However, because he is part-time, he earns \$400 per week (if he were full-time, he'd earn \$800 per week or \$3467/month) so he does not meet the Salary Level test. Therefore, pursuant to the FLSA, the employee is considered non-exempt and would be eligible for over-time in the event he worked over 40 hours in a workweek. However, the employee remains in the MPP Administrator I classification.*

Salary Basis and Fee Basis Tests

In addition to the Salary Level test, the employee must pass either the Salary Basis or Fee Basis test to be considered exempt from the provisions of the FLSA. Certain exceptions apply, as outlined in the Important Notes sections below.

³ Refer to Standard Duties Section for more information regarding Computer Professionals exemption.

⁴ The SCO's Payroll system allows employees in exempt classifications to be paid overtime via Earnings ID series beginning with "OF"; however, the hourly rate must be calculated manually for employees in exempt classifications. Refer to the SCO's Payroll Procedures Manual for more information.

Salary Basis:

To qualify for this exemption, employees generally must be paid not less than \$455 per week on a salary basis. “Salary basis” means employees receive a set amount of pay each week and the pay cannot vary based on quality/quantity of work. The exempt employee can receive additional compensation such as bonuses, stipends or additional employment without jeopardizing the exemption status, provided the \$455 per week threshold is met.

Under the Salary Basis test, the employee must be paid for the full week if any work is performed during that week, except under the following circumstances:

- Employees are not required to be paid for the entire week if the absence is due to personal reasons. In this case, campuses are permitted to dock pay or use earned vacation/personal holiday leave in full-day increments.
- Employees are not required to be paid for the entire week if the absence is due to illness or injury. In this case, campuses are permitted to dock pay or use a wage replacement benefit such as earned sick leave (in full-day increments unless on Family and Medical Leave), a disability plan, and worker’s compensation.
- Docking pay in increments less than a week for discipline for workplace infractions and major safety violations is permitted.
- Exempt computer employees may be paid at least \$455 per week on a salary basis *or* on an hourly/intermittent basis at a rate not less than \$27.63 per hour.
- Exempt employees’ pay can be offset by amounts employees receive as jury or witness fees, or for military pay.
- Employers are not required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.

Important Notes:

- The Salary Basis test does not apply to lawyers, doctors, “teachers” as defined by the FLSA, outside sales employees, and certain computer-related professionals paid at least \$27.63 per hour.⁵ Doctors include all Unit 1 employees. “Teachers” include instructional faculty, lecturers, teaching associates, and head coaches. Certain librarians, student service professionals (academic-related), and coaches may qualify for the “teacher” exemption under the FLSA; however, the exemption status must be reviewed on a case-by-case basis, based on the employee’s specific duties and responsibilities.
- Special consideration should be given to hourly/intermittent employees in exempt classifications. Otherwise exempt employees who are paid on an hourly/intermittent basis are considered non-exempt; therefore, work hours must be tracked and the employee is eligible for overtime in the event s/he works over 40 hours in a workweek.⁶

Fee Basis:

Exempt “administrative,” professional,” or “computer professional” employees also may be paid on a fee basis.⁷ In this case, the employee is paid an agreed sum for completing a single job, regardless of the time required to complete the work. However, the employee also must pass the Salary Level test of \$455 per week.

⁵ Refer to Standard Duties Section for more information regarding Computer Professionals exemption.

⁶ The SCO’s Payroll system allows employees in exempt classifications to be paid overtime via Earnings ID series beginning with “OF”; however, the hourly rate must be calculated manually for employees in exempt classifications. Refer to the SCO’s Payroll Procedures Manual for more information.

⁷ Refer to Standard Duties Section for more information regarding exemption categories.

Standard Duties Exemption Tests

To be exempt from FLSA's minimum wage, record-keeping and overtime provisions, the work of the employee must pass one of the Standard Duties tests: Executive, Administrative, Professional or Outside Sales. The employee also may qualify for exemption under special provisions for computer personnel or as a highly compensated employee. Standard Duties tests assess the employee's primary duties and minimum salary. Keep in mind that the job title may not reflect the scope of duties performed and the job title does not determine exempt status. Complete instructions and definitions are provided in Part 541 of the FLSA. DOL's FairPay Web site provides the following summaries of each test as provided below:

Executive Test

To qualify for the executive employee exemption, all of the following tests must be met:

- Primary duty must be managing the enterprise or a customarily recognized department or subdivision;
- Must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent;
- Must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.
- Minimum salary: \$455/week on salary basis

For more information, refer to DOL's Fact Sheet on the Executive exemption at:

http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17b_executive.htm

Administrative Test

To qualify for the administrative employee exemption, all of the following tests must be met:

- Primary duty must be 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.
- Minimum salary: \$455/week on salary or fee basis

The administrative exemption also is available to employees whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment. Academic administrative functions include operations directly in the field of education, and do not include jobs relating to areas outside the educational field. Employees engaged in academic administrative functions include department heads in institutions of higher education, academic counselors, and other employees with similar responsibilities.

For more information, refer to DOL's Fact Sheet on the Administrative exemption at:

http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17c_administrative.htm

Learned Professional Test

To qualify for the learned professional employee exemption, all of the following tests must be met:

- Primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and

- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
- Minimum salary: \$455/week on salary or fee basis

For more information, refer to DOL's Fact Sheet on the Professional exemption at:

http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17d_professional.htm

Creative Professional Test

To qualify for the creative professional employee exemption, all of the following tests must be met:

- Primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
- Minimum salary: \$455/week on salary or fee basis

For more information, refer to DOL's Fact Sheet on the Professional exemption at:

http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17d_professional.htm

Computer Professional Test

To qualify for the computer employee exemption, the following tests must be met:

- Primary duty must consist of:
 - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.
- Must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described above;
- Must be compensated either on a salary or fee basis at a rate not less than \$455 per week *or*, if compensated on an hourly/intermittent basis, at a rate not less than \$27.63 per hour.

The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. 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 or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt under the computer employee exemption.

For more information, refer to DOL's Fact Sheet on the Computer exemption at:

http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17e_computer.htm

Outside Sales

To qualify for the outside sales employee exemption, all of the following tests must be met:

- Primary duty must be making sales (as defined in the FLSA), 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
- Must be customarily and regularly engaged away from the employer's place or places of business.

The salary requirements of the regulation do not apply to the outside sales exemption. An employee who does not satisfy the requirements of the outside sales exemption may still qualify as an exempt employee under one of the other exemptions allowed by Section 13(a)(1) of the FLSA and the Part 541 regulations if all criteria for the exemption are met.

For more information, refer to DOL's Fact Sheet on the Outside Sales exemption at:
http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17f_outsidesales.htm

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Campus Guidelines for Determining the FLSA Status

Campuses are responsible for ensuring employees classified as "exempt" meet all exemption requirements under the FLSA, keeping in mind that the job title may not reflect the scope of duties performed and the job title does not determine exempt status. Suggested campus guidelines for determining the exemption status are provided below:

1. Campus manager prepares job description based on campus operational needs and submits to campus human resources office, staff or academic, as appropriate.
2. Campus HR office applies the FLSA Standard Duties tests to determine the exemption status, keeping in mind that job title may not reflect the scope of duties performed.
3. Based on the outcome of the Standard Duties exemption test, campus HR selects the most appropriate bargaining unit, classification, and skill level, if applicable.
4. If the employee is exempt under the Standard Duties test, campus HR then applies the salary tests:
 - a. Salary Level: Will the employee be paid at least \$455 per week? Keep in mind that this test does not apply to certain positions such as doctors, lawyers, "teachers" as defined by the FLSA, and outside sales employees.
 - b. Salary Basis: Is the employee paid on a salary basis, earning at least \$455 per week regardless of the quantity of work performed? Keep in mind that this test does not apply to certain positions such as doctors, lawyers, "teachers," outside sales employees, and certain computer-related professionals.
 - If "yes" to both questions, the employee is exempt from the FLSA provisions and is not eligible for over-time.
 - If "no" to one or both questions, the employee is considered non-exempt under the FLSA; therefore, work hours must be tracked and the employee is eligible for overtime

in the event s/he works over 40 hours in a workweek. However, the employee does not need to be reclassified to a non-exempt classification.⁸

The FLSA Status, CSU Classifications, and the CSU Salary Schedule

The FLSA status for all classifications and skill levels is provided in the CSU Salary Schedule. It is important to note that the FLSA status field in the CSU Salary Schedule refers to a classification's or skill level's exemption status under the Standard Duties test only and does not reflect impact of the Salary-Related tests applied to an employee in that classification. As noted previously, part-time employees in exempt classifications who are paid below \$455 per week (or \$1972 per month) are considered non-exempt under the FLSA.⁹ Similarly, hourly/intermittent employees (except certain computer-related professionals) who are appointed in exempt classifications are considered non-exempt under the FLSA because they do not meet the Salary Basis test. In both cases, hours must be tracked and overtime must be paid for any hours worked over 40 in a workweek, even though the employee remains in an exempt classification or skill level.

CSU firefighters and agricultural workers are noted in the CSU Salary Schedule with the FLSA status of "O" for other to denote the special FLSA regulations that apply to these employees.

CSU, the FLSA, and California Wage and Hour Laws

The CSU is subject to the FLSA and generally not subject to California wage and hour laws. In some cases, however, the CSU may make policy decisions to follow some of the California wage and hour laws which typically are communicated to campuses via coded memoranda. For questions regarding the applicability of a specific wage and hour law to the CSU, please contact your campus attorney.

The FLSA and CSU Collective Bargaining Agreements

The CSU and its employee unions can negotiate more generous provisions than provided in the FLSA. Refer to the collective bargaining agreements for supplemental information regarding work hours, overtime and compensatory time off. However, where the FLSA is more generous, the FLSA provisions supersede provisions of a collective bargaining agreement.

The FLSA Resources

The DOL provides a wide range of resources available to employers and employees. Refer to DOL's FairPay Web site at: <http://www.dol.gov/fairpay> or via telephone at 1-866-4USWAGE (1-866-487-9243) or TTY 1-877-889-5627.

Human Resources Administration's FLSA policy Web site provides current FLSA-related policies, technical instructions, and links to additional tools and resources. This site can be found at: <http://www.calstate.edu/HRAdm/Policies/flsa.shtml>

⁸ The SCO's Payroll system allows employees in exempt classifications to be paid overtime via Earnings ID series beginning with "OF"; however, the hourly rate must be calculated manually for employees in exempt classifications. Refer to the SCO's Payroll Procedures Manual for more information.

⁹ Does not apply to doctors, lawyers, "teachers" as defined by the FLSA, and outside sales employees.