

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, [29 CFR Part 541](#).

The [FLSA](#) requires that most employees in the United States 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.

However, Section 13(a)(1) of the FLSA provides an exemption from both [minimum wage](#) and [overtime pay](#) for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for [executive](#), [administrative](#), [professional](#), [computer](#) and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Executive Exemption

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

- The employee must be compensated on a [salary](#) basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee 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.

Administrative Exemptions

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

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's 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
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

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

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's 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.

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

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

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

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee 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 below;
- The employee's 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.

Outside Sales Exemption

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

- The employee's 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
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

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.

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The 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. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

Sandy Behnke

From: Karen E. Brunow <KBRUNOW@vonbriesen.com>
Sent: Wednesday, January 13, 2016 8:53 AM
To: Sandy Behnke
Subject: von Briesen & Roper Government Law Update: Employment and Labor Law Focus for 2016



Government Law Update

Public-Sector Employment and Labor Law Focus for 2016

Kyle J. Gulya, kgulya@vonbriesen.com or 608.316.3177

Jill Pedigo Hall, jhall@vonbriesen.com or 414.287.1271

Public-sector employers face significant challenges unique to their status as government entities. As 2016 rings in, public-sector employers should prepare for another year of escalated regulatory and legal scrutiny. We have identified four areas that will require public-sector employers' attention and planning in 2016:

FLSA Exempt Classification Regulatory Changes. In summer 2015, the U.S. Department of Labor proposed regulatory changes that will result in the reclassification of many current salaried exempt employees to non-exempt and thus eligible for overtime under the Fair Labor Standards Act. The proposal significantly increases the threshold salary required to qualify as an exempt white collar employee from \$455.00 per week (\$23,660 per year) to a regularly adjusted amount of approximately \$970.00 per week (\$50,440 per year). While DOL has not finalized the changes to the regulations, an increase in the salary basis (termed the "salary test") is a near certainty. Additionally, while the proposed regulations did not include a change to the "duties test," it is a possibility that the final regulations will contain changes to the duties tests for the various exemptions that further restrict which employment positions may qualify for salaried-exempt status. We anticipate implementation of these changes will occur in 2016. Because of the delay that resulted in the DOL extending the comment period on the proposed regulations last year, when the final regulations are issued, employers may only have a short time period to address compliance. Thus, in anticipation of these certain changes, public-sector employers are encouraged to

assess and develop a full understanding of potential exposure, and develop plans to ensure they are immediately able to comply with the final regulatory changes. We recommend the following steps:

- Analyze existing exempt classifications and immediately identify any "fringe" exempt positions and potentially affected employees and job classifications;
- Update job descriptions to reflect the reality of the work environment, job performance, and additional exempt duties;
- Ensure accurate tracking of hours worked and paid. Accurate records are key to defense, but also to understanding whether restructuring the position is necessary if it can no longer be classified as salaried exempt;
- Identify and quantify the scope of off-duty "work" by salaried employees;
- Evaluate current recordkeeping capabilities and available options in anticipation of a change in the duties test to a new division of labor test that will require recordkeeping of duties;
- Develop a structured plan and the related budget for addressing anticipated changes to nonexempt classifications and positions and possible compensation plan discrepancies;
- Determine whether departments and positions will require restructuring to eliminate overtime exposure and develop plans for doing so;
- Consider "fluctuating work week" agreements where applicable;
- Update employer policies regarding overtime and exempt status to ensure FLSA compliance and train supervisors regarding compliance; and
- Develop the organization's message to employees for anticipated changes.

2016 NON-REPRESENTED CLASSIFICATION COMPENSATION

1.5% GPA

GRADE ORDER LIST

Exempt	Pay Grade	80%	Control Point	120%
N/E	Pay Grade	80%	Control Point	120%
	Pay Grade B	\$12.43	\$15.54	\$18.65
N	PARKING RAMP ATTENDANT			
	Pay Grade C	\$13.29	\$16.61	\$19.93
N	BINDERY CLERK			
N	LIBRARY PAGE CLERK			
	Pay Grade D	\$14.14	\$17.68	\$21.22
N	LIBRARY CLERK			
N	OPERATIONS CLERK - LIBRARY			
N	PARKING ENFORCEMENT PERSON			
N	PARKING ENFORCEMENT/RAMP ATTENDANT			
	Pay Grade E	\$15.00	\$18.75	\$22.50
N	ACCOUNT CLERK I - FINANCE			
N	LABORER			
	Pay Grade F	\$16.30	\$20.37	\$24.44
N	ACCOUNT CLERK II - FINANCE			
N	ADMINISTRATIVE ASSISTANT - COMM/ECON DEV			
N	ADMINISTRATIVE ASSISTANT - FIRE			
N	ADMINISTRATIVE ASSISTANT - HEALTH			
N	ADMINISTRATIVE ASSISTANT - HR			
N	ADMINISTRATIVE ASSISTANT - PRFM			
N	INVENTORY CONTROL CLERK - DPW			
N	OPERATOR I			
N	OPERATOR I-PARKING			
N	SERVICE PERSON-CEA			
N	UTILITY LOCATOR			
	Pay Grade G	\$18.01	\$22.51	\$27.01
N	ACCOUNT CLERK III - FINANCE			
N	ADMINISTRATIVE SUPPORT SPECIALIST - DPW			
N	ADMINISTRATIVE SUPPORT SPECIALIST - HR			
N	ADMINISTRATIVE SUPPORT SPECIALIST - LEGAL SERVICES			
N	ADMINISTRATIVE SUPPORT SPECIALIST - LIBRARY			
N	ADMINISTRATIVE SUPPORT SPECIALIST - POLICE			
N	ADMINISTRATIVE SUPPORT SPECIALIST - UTILITIES			
N	COMMUNICATION TECHNICIAN - POLICE			
N	CUSTOMER SERVICE SPECIALIST - DPW			
N	GROUPS COORDINATOR			
N	LABORATORY TECHNICIAN			
N	LEAD CSO			
N	REAL ESTATE ASSESSMENT TECHNICIAN			
N	UTILITY CLERK - FINANCE			
N	WEIGHTS & MEASURES SPECIALIST			

Exempt	Pay Grade	80%	Control Point	120%
	Pay Grade H	\$19.72	\$24.65	\$29.58
N	ARBORIST			
N	ASSESSMENT TECHNICIAN			
N	DEPUTY CITY CLERK			
N	ELECTIONS CLERK			
N	ENGINEERING TECHNICIAN			
N	EROSION CONTROL INSPECTOR			
N	FACILITIES PLANS & RECORDS SPECIALIST			
N	FACILITIES TECHNICIAN			
N	FORENSIC EVIDENCE SPECIALIST			
N	GROUNDS TECHNICIAN			
N	HELP DESK ANALYST			
N	LIBRARY ASSISTANT			
N	LIQUIDS OPERATOR			
N	NETWORK SERVICES ASSISTANT			
N	OPERATOR II			
N	PAYROLL COORDINATOR			
N	PERSONAL PROPERTY ASSESSMENT TECHNICIAN			
N	PROPERTY TAX SPECIALIST			
N	SOLIDS OPERATOR			
N	UTILITY WORKER			
	Pay Grade I	\$21.44	\$26.80	\$32.16
N	ADMINISTRATIVE ASSISTANT - POLICE CHIEF			
N	ASSET MANAGEMENT PURCHASING SPECIALIST - UTILITIES			
N	BENEFITS COORDINATOR - HR			
N	CARPENTER/PAINTER			
E	CLUBHOUSE SUPERVISOR - PRFM			
N	COMMUNITY DEVELOPMENT SPECIALIST			
N	DIVERSITY COORDINATOR			
N	ENGINEERING SPECIALIST			
E	ENVIRONMENTALIST II			
N	FACILITIES CONTROL TECHNICIAN			
N	HORTICULTURIST-CONSERVATION TECHNICIAN			
N	HVAC TECHNICIAN/PIPEFITTER			
N	LEGAL ASSISTANT			
E	LIBRARIAN			
E	LIBRARY ASSISTANT SUPERVISOR			
N	MASTER MECHANIC			
N	PC/LAN SPECIALIST			
N	PROPERTY ASSESSOR II			
N	PURCHASING CLERK			
N	RECREATION COORDINATOR			
N	RELIEF OPERATOR/MAINTENANCE HELPER			
E	ROAD SUPERVISOR - VT			
N	SECRETARY TO THE MAYOR			
N	WATER PLANT OPERATOR			

Exempt	Pay Grade	80%	Control Point	120%
	Pay Grade J	\$23.15	\$28.94	\$34.73
E	BUSINESS MANAGER - LIBRARY			
E	CIVIL ENGINEER			
N	CIVILIAN FIRE INSPECTOR			
E	COMMUNITY RELATIONS SPECIALIST			
E	DPW PLANS & RECORDS SPECIALIST			
N	FACILITIES TECHNICIAN-ELECTRICIAN			
N	GIS SPECIALST			
N	MAINTENANCE SPECIALIST-MILLWRIGHT			
E	MARKETING COORDINATOR - LIBRARY			
N	OPERATIONS CREW LEADER - MSB			
E	PUBLIC HEALTH NURSE			
E	PUBLIC HEALTH PREPAREDNESS COORDINATOR			
E	SYSTEMS ANALYST			
	Pay Grade K	\$24.86	\$31.08	\$37.30
E	ADMINISTRATIVE SERVICES COORDINATOR - PRFM			
E	ADMINISTRATIVE SERVICES MANAGER - VT			
E	ASSISTANT TO FIRE CHIEF			
E	BUDGET ANALYST			
E	CITY SEALER			
N	CITY SURVEYOR			
E	ECONOMIC DEVELOPMENT SPECIALIST			
E	FISCAL RESOURCES MANAGER - POLICE			
E	HOUSING COORDINATOR			
N	INSPECTOR			
E	INSTRUMENTATION TECHNICIAN			
N	LEAD ELECTRICIAN			
N	LEAD MECHANIC			
E	MANAGERIAL ACCOUNT COORDINATOR - DPW			
N	MASTER ELECTRICIAN			
E	NETWORK SERVICES SUPERVISOR			
E	OFFICE MANAGER - DPW			
E	PARKING UTILITY MANAGER			
N	PLUMBER			
E	PRINCIPAL PLANNER			
N	PROPERTY ASSESSOR III			
E	PURCHASING MANAGER			
E	RECREATION PROGRAMMER			
	Pay Grade L	\$26.58	\$33.22	\$39.86
E	ADMINISTRATIVE SERVICES SUPERVISOR - POLICE			
E	ASSISTANT CITY ATTORNEY I			
E	COMMUNICATIONS COORDINATOR - MAYOR			
E	CUSTOMER SERVICE ACCOUNTING SUPERVISOR			
E	ENTERPRISE ACCOUNTING MANAGER			
E	FIRE PROTECTION ENGINEER			
E	HR GENERALIST			
E	LEAD SYSTEMS ANALYST			
E	LIBRARY SUPERVISOR			
E	PARATRANSIT COORDINATOR/OPERATIONS SUPERVISOR			
E	TRANSIT MAINTENANCE/OPERATIONS SUPERVISOR			
E	TRANSIT OPERATIONS SUPERVISOR			

Exempt	Pay Grade	80%	Control Point	120%
E	Pay Grade M	\$28.29	\$35.36	\$42.43
E	CITY CLERK			
E	ENGINEERING TECHNICIAN FOREMAN			
E	ENVIRONMENTAL PROGRAM COORDINATOR - UTILITIES			
E	OPERATIONS FOREMAN - DPW			
E	PUBLIC HEALTH NURSE SUPERVISOR			
E	RECREATION MANAGER			
E	SOFTWARE ENGINEER			
E	SUPERVISOR ENVIRONMENTAL HEALTH			
E	TECHNICAL SERVICES MANAGER - UTILITIES			
	Pay Grade N	\$30.01	\$37.51	\$45.01
E	INSPECTIONS SUPERVISOR			
E	NETWORK ADMINISTRATOR			
E	OPERATIONS FOREMAN-CEA			
E	OPERATIONS FOREMAN-CITY FORESTER			
E	POLICE LIEUTENANT			
E	PROFESSIONAL ENGINEER			
E	PROFESSIONAL ENGINEER - TRAFFIC			
E	RISK MANAGER			
E	STAFF DEVELOPMENT/TRAINING COORD			
E	WATER OPERATIONS SUPERVISOR			
E	WW OPERATIONS SUPERVISOR			
	Pay Grade O	\$31.73	\$39.66	\$47.59
E	ASSISTANT CITY ATTORNEY II			
E	ASSISTANT CITY ENGINEER			
E	FACILITIES MANAGER			
E	FACILITIES PROJECT MANAGER			
E	FIRE BATTALION CHIEF			
E	GOLF COURSE SUPERINTENDENT			
E	GROUNDS MANAGER			
E	POLICE CAPTAIN			
E	TRAFFIC ENGINEER			
	Pay Grade P	\$33.45	\$41.81	\$50.17
E	ASSISTANT CHIEF - POLICE			
E	ASSISTANT GENERAL MANAGER			
E	ASSISTANT LIBRARY DIRECTOR			
E	CITY ASSESSOR			
E	DEPUTY CITY ATTORNEY			
E	DEPUTY DIRECTOR COMMUNITY ECONOMIC DEVELOPMENT			
E	DEPUTY DIRECTOR FINANCE			
E	DEPUTY DIRECTOR HUMAN RESOURCES			
E	DEPUTY DIRECTOR OPERATIONS			
E	DEPUTY DIRECTOR PARKS RECREATION & FACILITIES MGMT			
E	DEPUTY DIRECTOR UTILITIES			
E	DEPUTY FIRE CHIEF			
	Pay Grade Q	\$35.17	\$43.96	\$52.75
E	NOTHING ASSIGNED			
	Pay Grade R	\$36.88	\$46.10	\$55.32
E	DEPUTY DIRECTOR/CITY ENGINEER			
E	MAYOR			

Exempt	Pay Grade	80%	Control Point	120%
	Pay Grade S	\$39.46	\$49.32	\$59.18
E	DIRECTOR PARKS RECREATION & FACILITIES MANAGEMENT			
E	FIRE CHIEF			
E	GENERAL MANAGER			
E	LIBRARY DIRECTOR			
E	POLICE CHIEF			
E	PUBLIC HEALTH OFFICER			
E	UTILITIES DIRECTOR			
	Pay Grade T	\$42.88	\$53.60	\$64.32
E	CITY ATTORNEY			
E	DIRECTOR COMMUNITY & ECONOMIC DEVELOPMENT			
E	FINANCE DIRECTOR			
E	HUMAN RESOURCES DIRECTOR			
E	INFORMATION TECHNOLOGY DIRECTOR			
E	PUBLIC WORKS DIRECTOR			