

The Fair Labor Standards Act (FLSA): Exemptions

Background

The Fair Labor Standards Act first came into being in 1938 to establish worker protections around compensation, especially pertaining to minimum wage and overtime rates. Later, it was determined that the Rule did not need to apply to everyone and that exemptions were needed. These exemptions are determined by the Secretary and defined by the “[541 regulations](#).” Three tests can impact exemption: the minimum salary test, the salary basis test, and the job duties test.

In 2014, President Obama requested new, updated regulations because it had been more than a decade since the last time the minimum salaries were adjusted. Then, on May 18, 2016, the Department of Labor issued a Final Rule, the “Overtime” Rule. The Final Rule focuses on distinguishing overtime-eligible employees from those who are exempt. Exempt employees are not eligible for overtime pay.

Exemptions

The burden is on the employer to establish the basis for exemption for each employee. In order to claim a white collar exemption, all three of the tests below must be met:

1. **Salary Basis Test:** employees must be paid on a salary basis, not an hourly basis
2. **Salary Level Test:** employees must meet the \$913 per week or \$47,476 per year
3. **Standard Duties Test:** employees’ duties must fall into one of the categories described below:
 - Executive: may apply to employees who oversee two or more employees and have hiring/firing authority
 - Administrative: may apply to employees who make at least \$47,476 per year, perform non-manual work, and exercise discretion and judgment as primary duty (more than 50% of time)
For example: this usually applies to employees in marketing and human resources roles.
 - Professional:¹
 - Learned professional: may apply to employees making at least \$47,476 per year in job positions that require advanced knowledge.
For example: teachers with an advanced degree can fall into this category if they are employed in a position that requires 4 year degree.
 - Teacher: may apply to employees teaching, tutoring, instructing or lecturing in area that is specifically defined as in education establishment
Note: the term “education establishment” is the most important consideration in this description.

¹ There are many different resources for Head Start programs to consider as they look into this exemption. [Opinion Letter FLSA 2008-13NA](#) offers guidance about whether Head Start programs are “educational establishments” based on source of licensure. For example, in states in which the Department of Welfare, as opposed to the Department of Education, oversees licensure, it is indicated that the state does not consider the program an educational establishment. In [Ramos vs. Lee County School Board](#), Head Start plaintiffs claimed entitlement to overtime payment, but the school board claimed exemption. The Court found that the Head Start teachers were engaged in teaching, tutoring, or instructing and that it did qualify as an education establishment. [Fact Sheet #46](#) says that teachers who take care of only physical needs cannot meet teacher exemption. Federal Unemployment Tax Act similarly addresses whether Head Start programs are educational establishments in [Letter No. 41-97](#) and [Letter No. 40-79](#), saying that Head Start grants operated by a community action or nonprofit do not qualify as an educational institution, but Head Start grants operated by a school district do qualify as an educational institution.