

# **Administrative Exemption**

## **Federal Guidelines**

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 (California's minimum is double the minimum wage. California's minimum salary goes to \$880 a week on January 1, 2018).
- 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.

Administrative exemption components and a brief explanation of how the DOL interprets the exemption are included below.

## **Salary Basis**

The position must be paid on a salary basis which means the gross amount per pay period cannot vary. The minimum weekly amount is not prorated for part-time employees.

## **Primary Duty**

"Primary duty" means the principal, main, major or most important duty the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

We need to identify the primary duty – that means one duty that is the emphasis on the character of the whole job or the primary reason the job exists. There can be a few subsequently related tasks, but note that management or supervision may not automatically be a primary duty if someone supervises. Supervision may not be an exempt function. It depends on how much "manual" (or non-exempt) work that person does compared to actual management.

## **Directly Related to Management or General Business Operations**

To meet the "directly related to management or general business operations" requirement, 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, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations;

government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities.

## **Employer's Customers**

An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, employees acting as advisors or consultants to their employer's clients or customers such as tax experts or financial consultants, for example — may be exempt.

## **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 then acting or making a decision after the various possibilities have been considered. After evaluating all the facts involved in the employee's particular employment situation, we determine if the employee has authority to make an independent choice, free from immediate direction or supervision. Consider the following factors:

- whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices;
- whether the employee carries out major assignments in conducting the operations of the business;
- whether the employee performs work that affects business operations to a substantial degree;
- whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval.

The fact that an employee's decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.

## **Matters of Significance**

The term "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. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

The standard for "matters of significance" is high and may be more than just financial. The criteria is measured by evaluating the types of independent decisions the position requires the employee to make and the risk or impact on the University as a whole, a division, or in some rare cases, an individual department.

# CALIFORNIA GUIDELINES

To qualify for the administrative exemption under California guidelines, all of the numbered guidelines must be met.

## 1. Has duties and responsibilities involving one or both of the following:

- Office or non-manual work "**directly related**" to your management policies or general business operations or those of your customers
- The administrative functions of a school system or educational establishment or one of its departments or subdivisions engaging in work **directly related** to its academic instruction or training

### *'Directly Related' Duties Defined for Administrative Exemption*

The California Supreme Court held that work duties qualify as administrative when "directly related" to management policies or general business operations. Work is "directly related" if it meets two components:

- The work must be "qualitatively" administrative. "White-collar" employees engaged in servicing a business may be involved in administrative operations if such servicing includes advising management, planning, negotiating and representing the company.
- "Quantitatively," the work must be of substantial importance to the management or operations of the business.

## 2. Customarily and regularly exercises discretion and independent judgment

### *'Customarily and Regularly Exercises Discretion and Independent Judgment' Defined for the Administrative Exemption*

For the administrative exemption to apply, the employee must "customarily and regularly exercise discretion and independent judgment." This phrase means the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The employee must have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.

The decision may be in the form of a recommendation for action, subject to a superior's final authority, but the employee must possess sufficient authority for the recommendations to affect matters of consequence to the business or its customers.

- Have the power to make independent choices pertaining to matters of significance and free from immediate supervision; or
- Have the ability to make a recommendation for action that is subject to a superior's final authority. The employee must possess sufficient authority for the recommendations to affect matters of consequence to the business or its customers.

Almost every employee must make decisions requiring discretion. The discretion and independent judgment exemption requires that the decisions must involve matters of consequence of real and

substantial significance to the policies or general operations of your business or customers. The tasks can be related directly to only a particular business segment, but must substantially affect the whole business.

Exercising discretion and independent judgment on matters of consequence is different than making decisions that can lead to serious loss through the choice of wrong techniques, improper application of skills, neglect or failure to follow instructions.

Employees in training for an exempt position are not exempt employees because they do not exercise discretion and independent judgment during the training process.

With respect to the administrative exemption, this phrase has been most frequently misunderstood and misapplied by employers and employees alike in cases involving the following:

- Confusion between the exercise of discretion and independent judgment, and the use of skill in applying techniques, procedures or specific standards.
- Misapplication of the phrase to employees making decisions relating to matters of little consequence.
- Misapplication of the exemption to employees engaged in production aspects of the employer's business as opposed to administrative functions. This is one of the most common misapplications.

**3. Regularly and directly assists a proprietor or an employee employed in an executive or administrative capacity; under only general supervision, performs work along specialized or technical lines requiring special training, experience or knowledge, or executes special assignments and tasks**

**4. Is “primarily engaged in” duties that meet the administrative test**

*Primarily Engaged In’ Defined for Administrative Exemption*

For purposes of the administrative exemption, "primarily engaged in" means that **more than one-half of the employee’s work time is spent engaged in exempt work**. This means an exempt employee spends more than 50 percent of his/her time performing:

- Exempt duties.
- Work that is directly and closely related to exempt work.
- Work properly viewed as a means for carrying out exempt functions.

Examples of exempt duties include advising management, planning, negotiating, representing the University, purchasing materials and supplies, promoting sales, researching business opportunities, analyzing business data and determining University or personnel policies.

**5. Meets the minimum salary test.**

The CA state minimum wage for exempt employee is two times the minimum wage, which is \$840 per week effective January 1, 2017.

The federal minimum wage for exempt employee is under discussion and may go to \$913 per week in 2017 depending on the outcome of President Trump’s order.

## Examples of Non-Management Employees who May Qualify

Three types of **administrative** employees who may qualify for the exemption if, and only if, they meet the criteria set forth above.

- Employees who regularly and directly assist a proprietor or exempt executive or administrator. Included in this category are Executive or administrative assistants to whom executives or high-level administrators have delegated part of their discretionary powers.
- Staff employees who are functional rather than department heads. This could include employees who act as advisory specialists to management, or to the employer's customers. Typical examples are tax experts, insurance experts, sales research experts, wage rate analysts, foreign exchange consultants, and statisticians. Such experts may or may not be exempt, depending on the extent to which they exercise discretionary powers. Also included in this category would be persons in charge of a functional department, which may even be a one-person department, such as credit managers, purchasing agents, buyers, personnel directors, safety directors, and labor relations directors.
- Employees who perform special assignments under only general supervision. Often, such employees perform their work away from the employer's place of business. Typical titles of such persons are buyers or field representatives.

## The Interpretation

The University of the Pacific, as do most employers, interprets the law and guidelines based on:

- DOL Opinion Letters which shape the interpretation and carve out exceptions
- Ongoing legal and regulatory guidance, cautions from the DOL, federal and state legal systems, and case law
- The results of prior audits and lawsuits from other organizations
- DOL Administrative Interpretation letters
- Corresponding State laws
- Decades of direct advice and counsel from practicing employment attorneys
- Training, workshops and seminars conducted by skilled practitioners including the actual state and federal wage and hour auditors

The HR team works together to make FLSA determinations. Ultimately, the assistant vice president for human resources has responsibility for the final determination.

## **Common Misperceptions**

1. Our ability or willingness to pay overtime or compensatory time has no bearing on the FLSA determination. We recognize the potential impact on an organization. Work with HR to formulate ideas to meet your budget constraints and manage unusual schedules or travel.
2. Our internal perception of what exempt versus non-exempt (or classified) means has no bearing on the determination. We recognize this perception and the difference in some fringe benefits, but the requirement is to follow the FLSA as interpreted.
3. A job's title has no bearing.
4. How other organizations classify the same or similar position has no bearing.

Based on the fact that this law has evolved over the years (and will continue to evolve), care must be taken to not base assumptions of FLSA status on past decisions. A position may have historically been exempt at Pacific but may need to be classified as non-exempt under current interpretations, or vice versa.

## **Desk Audit Questions**

If a job description is not clear and the determination could go either way, HR usually calls and asks questions specific to the guidelines above. The questions typically focus on the primary duty and the most significant decisions made by the incumbent in that position.

## **Perceptions**

Unlike almost every other industry, employees in higher education seem to equate “exempt” with “professional.” This is unfortunate because every position at our institution contributes in meaningful ways. We consider all of our employees professionals and require them to act as such. We acknowledge the difference in retirement plans between the employee groups, but that is a state issue. Part of the reason exempt staff have different vacation accrual rates is to recognize the vast number of overtime hours most of them work over the course of a year without compensation. We also acknowledge that the Pacific does not budget for overtime pay.

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