

New Department of Labor Rule Announced 5/18/2016 to be Effective 12/01/2016

What does this change mean?

All positions are classified as either “**exempt**” or “**nonexempt**.” Position duties must meet the U.S. Department of Labor tests to be classified as “exempt.” Classifications will be stated in the job description.

Salary Nonexempt

Nonexempt employees are expected to work the normal workday and workweek, unless their manager authorizes overtime **in advance**. Nonexempt employees will be paid overtime for all hours worked in excess of 40 in a workweek and must maintain a true and accurate record of hours worked.

- Not all employees who earn less than \$913 per week must be “hourly”
- An employee may be paid on a salary basis and still qualify for overtime. They would be classified as salaried non-exempt.
 - Hours must be tracked by a timesheet to calculate all hours worked and any overtime pay that is over 40 hours in a work week.

Salary Exempt

Exempt employees do not receive overtime pay. To qualify for exemption, all of the following tests must be met:

Executive Exemption: The employee must be compensated on a **salary basis** at a rate not less than \$913 per week. The employee’s **primary duty** must be **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** full-time employees or their equivalent. 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 Exemption: The employee must be compensated on a **salary or fee basis** at a rate not less than \$913 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 **employer’s customers**. The employee’s **primary duty** includes the exercise of **discretion and independent judgment** with respect to matters of significance.

Professional Exemption: The employee must be compensated on a **salary or fee basis** at a rate not less than \$913 per week. The employee’s primary duty must be the performance of work requiring **advanced knowledge** defined as work that is predominately intellectual in character and that includes work requiring the consistent exercise of discretion and judgment. The advanced knowledge must be in a **field of science or learning**. The advanced knowledge must be **customarily** acquired by a **prolonged course of specialized intellectual instruction**.

Teachers Exemption: Teachers are exempt from overtime if their primary duty is teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include academic teachers, kindergarten or nursery school teachers, and music teachers. The salary and salary basis requirements do not apply to bona fide teachers.

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

- The employee must be compensated on salary or fee basis (as defined in the regulations) at a rate not less than \$913 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.

Invention, Imagination, Originality or Talent

This requirement distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy. Exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee. Whether the exemption applies, therefore, must be determined on a case-by-case basis. The requirements are generally met by actors, musicians, composers, soloists, writers, novelists, and others as set forth in the regulations.