

COMPLIANCE OVERVIEW

Provided by Cowden Associates, Inc.

FLSA – The White Collar Exemption Rules

The Fair Labor Standards Act (FLSA) regulates minimum wage and overtime payment provisions for employees. Most employers and employees in the United States are subject to the FLSA.

Among other things, the FLSA requires employers to compensate their employees for all hours employees are “suffered or permitted” to work. This means that an employer must compensate its employees for all hours employees actually work and all hours during which employees are required to remain available for their next assignments.

However, the FLSA also provides various exemptions from minimum wage and overtime payment provisions. Among these, the most common are the “white collar” exemptions. The white collar exemptions apply mainly to executive, administrative and professional (EAP) employees, but they also include outside sales personnel and certain computer and highly compensated employees.

This Compliance Overview provides an overview of the white collar exemptions, as well as an overview of the requirements employees must meet to qualify for them.

HIGHLIGHTS

WHITE COLLAR EXEMPTIONS APPLY TO:

- Executive, administrative and professional employees
- Outside sales personnel
- Certain computer employees
- Certain highly compensated employees

QUALIFICATIONS

To qualify for a white collar exemption, an employee must meet:

- A salary basis test;
- A salary level test; and
- A duties test.

LINKS AND RESOURCES

- DOL Fair Labor Standards Act [Advisor](#)
- DOL [final rule](#) increasing the salary level for the white collar exemptions

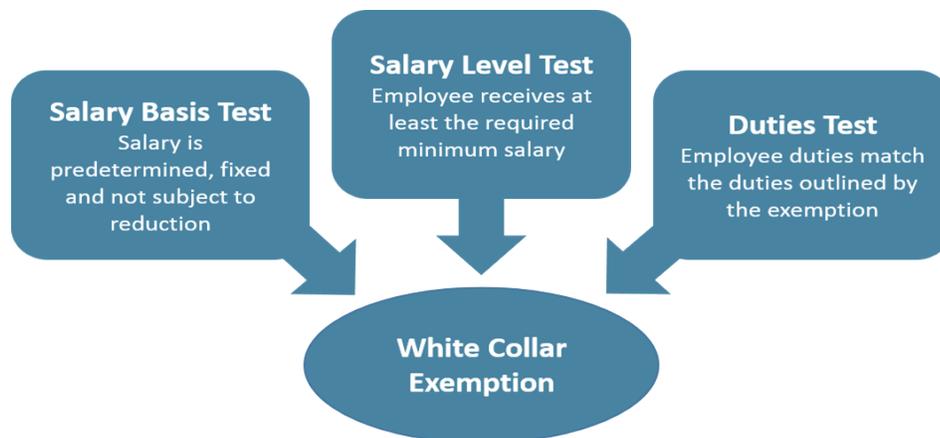
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This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

THE WHITE COLLAR EXEMPTIONS

To qualify for a white collar exemption, an employee must meet a salary basis test, a salary level test and a duties test. Job titles do not determine exempt status.

- The **salary basis test** is used to make sure the employee is paid a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work.
- The **salary level test** is used to ensure that the employee meets a minimum specified amount to qualify for the exemption. This salary threshold provides employers with an objective and efficient way to determine whether an employee qualifies for a white collar exemption. The current salary level is set at **\$455 per week** (\$23,660 per year) for EAP employees and **\$100,000 per year** for highly compensated employees.
- The **duties test** requires that the employee's job duties conform to EAP duties, as defined by law. This analysis requires a more thorough evaluation of whether an employee can be classified as an administrative, professional, outside sales, computer or highly compensated employee.



The white collar exemptions do not apply to:

- “Blue collar” workers who typically perform manual labor. Blue collar worker occupations include mechanics, plumbers, electricians, construction workers and assembly line workers);
- Law enforcement personnel (police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers and park rangers);
- First responders (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.

SALARY LEVEL UPDATE

In May 2016, the DOL issued a [final rule](#) to increase the minimum salary level for EAP employees from \$455 per week (\$23,660 per year) to **\$913 per week** (\$47,476 per year), effective Dec. 1, 2016. The new salary level represent the 40th percentile of wages earned by workers in the lowest-wage census region in the United States (currently the South) for a full-year worker. The final rule also increased the \$100,000 salary level for highly compensated employees to **\$134,004 per year**—the 90th percentile of wages earned by full-time workers across the entire United States.

Under this rule, these higher salary levels would be updated **every three years** to maintain the salary level at their corresponding 40th or 90th percentiles. The rule also requires the DOL to publish updated rates in the [Federal Register](#) and on the Wage and Hour Division’s [website](#) at least 150 days before their effective date.

The final rule met opposition from business groups and state governments, who filed separate lawsuits in federal court to prevent the law from becoming effective. The lawsuits were consolidated in Oct. 2016 and, on **Nov. 22, 2016**, a federal judge issued a nationwide injunction that halted implementation of the final rule just days before its effective date. The DOL filed an appeal to remove the nationwide injunction on Dec. 1, 2016. However, the appellate court has not yet issued a decision on this matter.

As a result, employers are not currently required to comply with the new \$913 per week and \$134,004 per year salary levels.

DUTIES TEST

Exemption Type	Duties and Qualifications
Executive:	<ul style="list-style-type: none"> 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 equivalents; 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:	<ul style="list-style-type: none"> 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.
Creative Professional:	<ul style="list-style-type: none"> 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.

Exemption Type	Duties and Qualifications
<p>Learned Professional:</p>	<ul style="list-style-type: none"> 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.
<p>Computer Employee:</p>	<ul style="list-style-type: none"> 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: <ol style="list-style-type: none"> The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; 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; The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or A combination of the aforementioned duties, the performance of which requires the same level of skills.
<p>Outside Sales:</p>	<ul style="list-style-type: none"> 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.
<p>Highly Compensated Employees:</p>	<ul style="list-style-type: none"> Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least equal to the salary level test 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.

MORE INFORMATION

Contact Cowden Associates, Inc. or visit the DOL [website](#) for more information on federal wage payment and work hour laws.