

## **Summary of Exemption under the FLSA**

Section 13(a)(1) of the FLSA exempts executive, administrative, professional, and outside sales employees from the minimum wage and overtime requirements of the FLSA, provided they meet certain tests regarding job duties and responsibilities and are compensated at not less than \$455 per week or \$27.63 an hour. The special requirements which apply to each category of employees are summarized below.

### **Executive Exemption**

Applicable to employees who have management as their primary duty; who direct the work of two or more full-time employees; who have the authority to hire and fire or make recommendations regarding decisions affecting the employment status of others; who regularly exercise a high degree of independent judgment in their work; who receive a salary which meets the requirements of the exemption; and who do not devote more than 20% of their time to non-management functions.

### **Administrative Exemption**

Applicable to employees who perform office or non-manual work which is directly related to the management policies or general business operations of their employer or their employer's customers, or perform such functions in the administration of an educational establishment; who regularly exercise discretion and judgment in their work; who either assist a proprietor or executive, perform specialized or technical work, or execute special assignments; who receive a salary which meets the requirements of the exemption; and who do not devote more than 20% of their time to work other than that described above.

### **Professional Exemption**

Applicable to employees who perform work requiring advanced knowledge and education, work in an artistic field which is original and creative, work as a teacher, or work as a computer system analyst, programmer, software engineer, or similarly skilled worker in the computer software field; who regularly exercise discretion and judgment; who perform work which is intellectual and varied in character, the accomplishment of which cannot be standardized as to time; who receive a salary which meets the requirements of the exemption, and who do not devote more than 20% of their time to work other than that described above.

### **Computer Employee Exemption**

Applicable to employees who apply systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or design, develop, document, analyze, create, test or modify computer systems or programs, including prototypes, based on and related to user or system design specifications.

### **Typical Problems**

Some problems and misconceptions which are commonly found in the application of the Section 13(a)(1) exemptions are:

- Employers without a formal sick leave policy docking salaried, exempt employees for time missed from work because of sickness.
- Employees not receiving full salary payments each week.

- Employees performing routine production type duties that seem related to general business operations but which have no bearing on setting of management policies.
- Employees who hold degrees performing jobs which are not professional in nature or to which the degree they hold is not applicable.
- Employers confusing acquired job skills with the exercise of independent judgment and discretion.
- Employees placed on salary and classified as exempt without regard to duties or percentage of time spent in exempt duties.

## **Fact Sheets**

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

<http://www.dol.gov/esa/regs/compliance/whd/whdfs17.htm>

[Fact Sheet #17A](#) Exemption for Executive, Administrative, Professional, Computer and Outside Sales

[http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17a\\_overview.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17a_overview.htm)

[Fact Sheet #17B](#) Executive Exemption

[http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17b\\_executive.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17b_executive.htm)

[Fact Sheet #17C](#) Administrative Exemption

[http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17c\\_administrative.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17c_administrative.htm)

[Fact Sheet #17D](#) Professional Exemption

[http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17d\\_professional.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17d_professional.htm)

[Fact Sheet #17E](#) Computer-Related Occupations Exemption

[http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17e\\_computer.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17e_computer.htm)

[Fact Sheet #17G](#) Salary Basis, Part 541 Exemptions

[http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17g\\_salary.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17g_salary.htm)