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DETERMINING WHETHER THE EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EXEMPTIONS APPLY

Salary Basis Test

1 Is the employee paid a salary of **at least** \$455 per week?

No

Employee is likely **Non-Exempt**¹

Yes

Primary Duties Test

2 Do the employee's **primary** duties involve **non-manual** work?

No

Employee is likely **Non-Exempt**

Yes

3 Is the employee's **primary** duty ...

Remember!

A thorough analysis of the duties employees **actually perform** is **critical**. While they may be relevant, Job title or description is **not determinative**.

EXECUTIVE

To manage the company or a department?

- Does employee regularly direct the work of 2 FTEs?
- Does employee hire, fire, or make recommendations regarding same?

ADMINISTRATIVE

To perform work directly relating to company or customer management or business operations?²

- Does employee exercise discretion and independent judgment with respect to matters of significance?³ (i.e. make an independent choice free from immediate direction)

LEARNED PROFESSIONAL

To perform work that requires advance knowledge in an intellectual field (learning or science)?

- Was advanced knowledge acquired by a prolonged course of specialized intellectual instruction?

CREATIVE PROFESSIONAL

To perform work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor?

Yes

Employee is likely **Exempt**

The determination that an employee is **exempt** can be **very fact intensive**. It is **highly recommended** that counsel review FLSA analysis efforts.

No

Employee is **Non-Exempt**

¹ Be mindful that the salary basis requirements do not apply to bona fide outside sales employees, computer professionals, teachers, or practitioners of law or medicine, which are outside the scope of this chart.

² Examples include: tax; finance; accounting; budgeting; auditing; quality control; purchasing; advertising; marketing; safety and health; personnel management; human resources; employee benefits; public relations, government relations; computer network, internet, and database administration; legal and regulatory compliance; and similar activities

³ Factors to consider include whether the employee: has authority to formulate, affect, interpret, or implement management policies or operating practices; carries out major assignments in conducting the operations of the business; performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; has authority to commit the employer in matters that have significant financial impact; has authority to waive or deviate from established policies and procedures without prior approval; has authority to negotiate and bind the company on significant matters; provides consultation or expert advice to management; is involved in planning long- or short-term business objectives; investigates and resolves matters of significance on behalf of management; or represents the company in handling complaints, arbitrating disputes, or resolving grievances.