

Which Professional Employees Really are Exempt? Part 1 of 2

Who qualifies as a “professional” under the FLSA exemption regulations? It is not as simple as looking for a “white collar” in the workplace.

As jobs have become more specialized and employees are required to be experts in their field, more employees may appear to be “professionals.” But, are these employees “professionals” for the purposes of the Fair Labor Standards Act (FLSA) and therefore exempt from the Act’s overtime requirements? As often is the case with the FLSA, the answer is “it depends.”

Specifically, to be exempt professionals, employees must meet two criteria. First, they must be compensated on a salary or fee basis at a rate of at least \$455 per week, exclusive of board, lodging, or other facilities. Second, their primary duty must meet either the “learned professional” or the “creative professional” criteria.

This week’s E-Tips focus on the “learned professional” exemption. Next week, the E-Tips will examine court cases explaining the professional exemption and discuss how creative professionals in music, writing, acting, and the graphic arts are covered.

Learned Professionals Explained

To qualify as a learned professional, the FLSA regulations, found at 29 C.F.R. §541.301, indicate that an employee’s primary duty must meet a three-prong test. Specifically, the employee must (1) perform “work requiring advanced knowledge;” (2) the advanced knowledge must be in “a field of science or learning;” and (3) the advanced knowledge must be customarily acquired by a “prolonged course of specialized intellectual instruction.”

To be considered “work requiring advanced knowledge,” the work must be predominantly intellectual in character, and includes work requiring the consistent exercise of discretion and judgment, as distinguished from the performance of routine mental, manual, mechanical, or physical work. According to the FLSA regulations, advanced knowledge cannot be attained at the high school level.

A “field of science or learning” includes law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various sciences, pharmacy, and other similar occupations that have a recognized professional status. These occupations are in contrast to the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

“A prolonged course of intellectual instruction” requires specialized academic training that is a standard prerequisite for entrance into a profession. Thus, according to the regulations, the best evidence that an employee meets this requirement is if the employee has an “appropriate” academic degree. However, a formal degree is not required, and the exemption is available to employees who attain advanced knowledge through a combination of work experience and intellectual instruction.

Examples of exempt professionals include registered or certified medical technologists, registered nurses (not licensed practical nurses), dental hygienists and physician assistants who have completed four academic years of pre-professional and professional study, certified public accountants, and

licensed funeral directors and embalmers. In contrast, most paralegals and legal assistants generally do not qualify because those jobs do not require a specialized academic course of study.

Doctors and Lawyers Normally are Exempt Professionals

Physicians and lawyers are considered exempt if they have a valid license or certificate permitting the practice of medicine and law. Physicians consist of medical doctors including general practitioners and specialists, doctors of osteopathy, podiatrists, dentists, and optometrists. Medical interns and residents who have the appropriate academic degrees for the general practice of medicine also are covered under this exemption.

Note, however, that physicians and lawyers do not have to be paid on a salary or fee basis in order to meet this exemption if they hold a valid license or certificate and actually are engaged in professional practice.

Most Teachers are Exempt, Too

Any employee actively employed by an educational establishment and whose primary duty includes teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge also is an exempt professional. Examples include regular academic teachers, teachers of kindergarten or nursery school pupils, teachers of gifted or disabled children, teachers of skilled and semi-skilled trades and occupations, and vocal or instrumental music instructors.

Teachers who have teaching certificates typically will qualify for the exemption; however, a certificate is not required. In addition, teachers also are exempted from the salary or fee basis requirement if they are actively employed in an educational establishment, regardless of whether they have a certificate.

Tips covered in Part II: Court cases explaining the professional exemption and a discussion of how creative professionals in music, writing, acting and the graphic arts are covered.

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