

Employee Name: \_\_\_\_\_ Office \_\_\_\_\_

**Fair Labor Standards Act (FLSA)  
Exempt/Non-Exempt Checklist**

**Instructions: After completing the checklist please check the boxes below that apply to the above named employee**

- None of the exemptions apply to the above named employee**
- The following exemption applies to the above named employee**
  - Executive Exemption: pages 1 – 2**
  - Administrative Exemption: pages 4 – 6**
  - Professional Exemption: pages 7 - 9**
  - Computer Exemption: page 10**

**Salary – The following applies to all exempt positions**

1. Salary means employee regularly receives a predetermined amount each pay period for work performed in any week.
2. Salary is exclusive of board, lodging or other facilities.
3. Employee may be subject to disciplinary deductions when applied to employee discipline
4. Absences of a work day or longer may result in full-day salary reductions if the absence is caused by personal illness or other personal reasons
5. Work week deductions are unavailable for absences caused by jury duty, witness duty, or temporary military leave.
6. Salary deductions are available for absences governed by the FMLA

## **Executive Exemption**

Please read the following information provided to assist you in answering each of the questions at the end of the narratives. If the questions are all the questions are answered “yes”, the employee meets the executive exemption test.

**Question No. 1: Does the employee receive a salary of at least \$455 per week?**

Yes  No

## **Duties and Responsibilities**

1. Management duties include interviewing, selecting and training of employees, setting and adjusting their rates of pay and hours of work; directing their work; maintaining their production or sales records for use in supervision or control; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling their complaints and grievances and disciplining them when necessary; planning the work; determining the techniques to be used; proportioning the work among the employees; determining the types of materials, supplies, machinery or tools to be used, or merchandise to be bought, stocked or

sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety of employees and property.

2. Primary duty generally means the principal or most important duty the employee performs (Management)
3. When an employee spends less than the majority of his/her time performing management functions, he/she may still be considered an executive depending upon other factors such as:
  - a. The relative importance of the managerial duties as opposed to the other types of duties;
  - b. The frequency with which the employee exercises discretionary powers;
  - c. The employee's relative freedom from supervision; and
  - d. The relationship between the employee's salary and the wages paid to other employees who perform the same kind of non-exempt work performed by the supervisor.
4. Employee must direct a unit of employees (at least 2) with a permanent status-continuing function, not merely a collection of employees assigned to complete a project.
5. Consider what percentage of time employee spends performing similar duties to those completed by subordinates. If significant administrative or professional duties are performed, consider the "combination" exemption.
6. If fewer than six subordinates are supervised, examine primary duty very closely (i.e., employee turnover, contacts with internal and external customers, maturity of functional area).

**Question No. 2: Is the employee's primary duty the management of a customarily recognized department?**

Yes  No

**Supervision**

1. Joint or shared supervision with another exempt classified employee is insufficient.
2. Supervision in the regular manager's absence is insufficient.

**Question No. 3: Do the employee's duties include the supervision of two or more employees or the equivalent every week?**

Yes  No

**Authority**

1. Are suggestions and recommendations part of the employee's job duties?
2. Are recommendations frequently made or requested?
3. Are recommendations frequently relied upon by management?
4. Do the suggestions involve employees the executive regularly directs?

**Question No. 4: Does the employee have the authority to hire or fire assigned employees?**

Yes  No

**Question No. 5: Are the employee's recommendations concerning hiring, firing, advancement, promotion or other change given particular weight?**

Yes  No

# Administrative Exemption

Please read the following information provided to assist you in answering each of the questions at the end of the narratives. If questions 1, 2 and 3 or 1 and 4 are all answered “yes”, the employee meets the administrative exemption test.

## Salary

**Question No. 1: Does the employee receive a salary of at least \$455 per week or the entry level for a professional instructor in the case of academic administrative personnel?**

Yes  No

The administrative operations of the business include:

	Yes	No		Yes	No
Tax			Safety and Health		
Finance			Personnel Management		
Accounting			Human Resources		
Budgeting			Employee Benefits		
Auditing			Labor Relations		
Insurance			Public Relations		
Quality Control			Government Relations		
Purchasing			Computer Network		
Advertising			Internet and Database Administration		
Marketing			Legal and Regulatory Compliance		
Research			Labor Relations		

1. Administrative duties do not include routine or structured tasks such as bookkeeping, data tabulation or clerical duties.
2. The administrative work must be of substantial importance to the management or operation of the business, such as work affecting the development of policies or responsibilities to execute or carry out policy.
3. To qualify as a primary duty, the employee’s principal or most important duty must involve performing the high-level administrative functions.
4. When an employee spends less than the majority of his/her time performing high-level administrative functions, the employee may qualify under the administrative exemption if:
  - a. The relative importance of the high-level administrative duties is greater than the other types of duties;
  - b. The employee frequently exercises discretionary powers;
  - c. The employee’s salary is distinguishable from the wages paid to other employees who perform the same kind of non-exempt work.

**Question No. 2: Does the employee’s primary duty consist of the performance of office or non-manual work directly related to management policies or general business operations (i.e., administrative work) of the employer or its customers, as opposed to primarily involving production of sales, goods or services?**

Yes  No

**Discretion and Independent Judgment**

The employee must exercise discretion and independent judgment with respect to matters of significance as opposed to daily routine decisions

Independent judgment and discretion involves the comparison and evaluation of possible courses of conduct and having the authority to make an independent choice, free from immediate direction with respect to matters of significance. (Does not include the use of manuals, guidelines or software packages to make determinations).

The exercise of independent judgment and discretion includes the use of skill in applying techniques, procedures or special standards.

Discretion and Independent Judgment will depend on several considerations:

	Yes	No
1. Does the employee have authority to formulate, affect, interpret or implement management policies or operating practices	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the employee carry out major assignments in conducting the operations of the business?	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the employee perform 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?	<input type="checkbox"/>	<input type="checkbox"/>
4. Does the employee have authority to commit the employer in matters that have significant financial impact?	<input type="checkbox"/>	<input type="checkbox"/>
5. Does the employee have authority to waive or deviate from established policies and procedures without prior approval?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the employee have authority to negotiate and bind the company on significant matters?	<input type="checkbox"/>	<input type="checkbox"/>
7. Does the employee provide consultation or expert advice to management?	<input type="checkbox"/>	<input type="checkbox"/>
8. Does the employee participate in planning long or short term business objectives?	<input type="checkbox"/>	<input type="checkbox"/>
9. Does the employee investigate and resolve matters of significance on behalf of management?	<input type="checkbox"/>	<input type="checkbox"/>
10. Does the employee represent the company in handling complaints, arbitrating disputes or resolving grievances?	<input type="checkbox"/>	<input type="checkbox"/>

11. Does the employee make recommendations to management on policies and procedures?	<input type="checkbox"/>	<input type="checkbox"/>
12. Does the employee conduct independent investigation and resolution of issues without prior approval?	<input type="checkbox"/>	<input type="checkbox"/>
13. Does the employee develop guidebooks, manuals or other policies and procedures for the employer or the employer's customers?	<input type="checkbox"/>	<input type="checkbox"/>
14. Does the employee provide personal responsibilities, trouble shooting or problem solving activities on behalf of management?	<input type="checkbox"/>	<input type="checkbox"/>
15. Does the employee use personalized communication techniques?	<input type="checkbox"/>	<input type="checkbox"/>
16. Does the employee provide primary contact to public or customers on behalf of the employer?	<input type="checkbox"/>	<input type="checkbox"/>
17. Does the employee have the duty to anticipate competitive products or services and distinguish from them from competitor's products or services?	<input type="checkbox"/>	<input type="checkbox"/>
18. Does the employee advertise, do promotional work or coordinate departments	<input type="checkbox"/>	<input type="checkbox"/>
19. Does the employee set requirements or other activities for, or on behalf of, the employer or employer's clients or customers?	<input type="checkbox"/>	<input type="checkbox"/>

**Discretion and independent judgment is not:**

- a. Applying knowledge, following prescribed procedures, or determining or determining which procedures to follow.
- b. Determining whether specified standards have been satisfied, even if there is some leeway in reaching a conclusion;
- c. Performing inspection functions by following established techniques and procedures with skills acquired through special training or experience;
- d. Formulating recommendations based upon the development of facts concerning conformity with a known standard;
- e. Comparing items based upon established standards, known through experience or written manuals;
- f. Screening applicants or conducting interviews to determine satisfaction of certain minimum qualifications;
- g. Making decisions that do not commit the employer is substantial respects financially or otherwise; or
- h. Negotiating settlements with policy holders where the individual is not given "reasonable latitude" in carrying on those negotiations.

**Question No. 3: Do the employee's duties include work requiring the exercise of discretion and judgment?**

Yes  No

**Academic Administrative Exemption**

An educational institution includes an elementary or secondary school system, an institution of higher education and special schools for mentally or physically disabled or gifted children, with no distinction between public and private organizations.

Academic administrative activities mean work directly relate to the academic operations and academic functions of the institution, such as administration of curriculum, examination of quality and methods of instruction, measurement of learning potential and achievement, maintenance of academic and grading standards and other aspects of a teaching program.

Academic administrative responsibilities do not include building management and maintenance, supporting the health of students or activity performed by social workers, psychologists or even dieticians.

**Question No 4: Does the employee's primary duty consist of the performance of office or non-manual work, directly related to academic instruction or training in an education institution?**

Yes  No

## Professional Exemption (“Learned Professions”)

Please read the following information provided to assist you in answering each of the questions at the end of the narratives. If questions 1, 2, and 3 or 1 and 4 are answered yes, the employee meets the professional exemption test.

**Question No. 1: Does the employee receive a salary of at least \$455 per week? (Note: Those who’ve completed the educational requirements for a law or medical degree need not meet the minimum salary requirement. Also teachers need not be certified or meet the minimum salary requirement to qualify as learned professionals.)**

Yes  No

### Knowledge or Education Required

Knowledge must not be restricted to the mechanical arts.

Requisite knowledge must be customarily acquired by a prolonged course of specialized intellectual study. In some subjects, however, the specialized intellectual study may be acquired by a combination of intellectual study and work experience.

Professions covered by the exemption include: lawyers, doctors, dentists, teachers, registered nurses, (not LPNs), accounting (not bookkeepers), actuarial computation, clergy, engineering, (have engineering degrees or the or perform work of the sort usually performed by licensed professional engineers), education and various types of physical, chemical and biological sciences, (but not technicians), pharmacists and other employees who perform work of an “advanced knowledge” similar to that historically associated with the traditional learned professions.

1. Professional exempt work means work that is predominantly intellectual, requires “specialized education”, and involves the exercise of discretion and judgment.
2. Professionally exempt workers must have education beyond high school, and usually beyond college, in fields that are distinguished from (more “academic” than) the mechanical arts or skilled trades. Advanced degrees are the most common measure of this, but are not absolutely necessary if an employee has attained a similar level of advanced education through other means (and performs essentially the same kind of work as similar employees who do not have advanced degrees).
3. Primary duty generally indicates that the principal and most important part of the job is pursuing the profession.

**Question No. 2: Does the employee perform work requiring knowledge of an advanced type in a recognized field of science or learning?**

Yes  No



**Discretion and judgment**

	Yes	No
1. Does the employee make decisions to depart from prescribed standards or permitted tolerances?		
2. Does the employee make decisions that affect the operational policies of the employee's department?		
3. Does the employee formulate recommendations to a customer for the purchase of securities?		
4. Does the employee make decisions in connection with negotiations where the individual is given "reasonable latitude" in carrying on those discussions, which are binding on the employer?		
5. Does the employee formulate recommendations, even if management personnel must review and accept the recommendation prior to implementation?		
6. Does the employee formulate and participate in the formulation of policy for the business unit?		
7. Does the employee have broad authority to commit the employer in substantial respects financially.		

**Discretion and judgment is not:**

- a. Applying knowledge, following prescribed procedures or determining which procedure to follow;
- b. Determining whether specified standards have been satisfied, even if there is some leeway in reaching a conclusion;
- c. Performing inspection functions by following established techniques and procedures with skills acquired through special training or experience;
- d. Formulating recommendations based upon the development of facts concerning conformity with a known standard;
- e. Comparing items based upon established standards, known through experience or written manuals;
- f. Screening applicants or conducting interviews to determine satisfaction of certain minimum qualifications; or
- g. Making decisions to do not commit the employer in substantial respects financially or otherwise.

**Question No. 3: Does the employee's duties include work requiring consistent exercise of discretion and judgment?**

Yes  No

## Primary Duties - Creative Professional

Some employees may also perform “creative professional” job duties which are exempt. This classification applies to such as actors, musicians, composers, writers, cartoonists, and some journalists. It is meant to cover employees in the type of jobs whose work requires invention, imagination, originality or talent; who contribute a unique interpretation or analysis.

	Yes	No
1. Is the work a recognized field of artistic or creative endeavor to include music, writing, acting and the graphic arts?		
2. Does the work require intelligence, diligence and accuracy with the individual having broad leeway to develop an original work product?		
3. Does the employee have controlling latitude of the final work product?		

**Question No. 4: Do the employee’s primary duties consist of activities requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor?**

Yes  No

## Computer Exemption – Employee involved in design or application of computers and related systems

Please read the following information provided to assist you in answering each of the questions at the end of the narratives. If questions 1 and 2 are answered “yes” the employee meets the computer exemption test.

**Question No. 1: Does the employee receive a salary of at least \$455 per week or if paid hourly at a rate of not less than \$17.63 per hour?**

Yes  No

**Question No. 2: Does the employee’s primary duty consist of the performance of work that requires the application of one of the following:**

	Yes	No
1. Systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional specifications	<input type="checkbox"/>	<input type="checkbox"/>
2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on user or system design specifications?	<input type="checkbox"/>	<input type="checkbox"/>
3. The design, documentation, testing, creation, or modification of computer programs related to machine operating systems?	<input type="checkbox"/>	<input type="checkbox"/>
4. A combination of the duties stated above, which requires the same level of skill?	<input type="checkbox"/>	<input type="checkbox"/>

The exemption typically requires the expertise and skill to work independently.

The exemption does **not** apply to positions involving operation, repair or maintenance of computer hardware, networks or equipment.