


FLSA EXEMPTIONS AND PROPOSED CHANGES

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To which employers/employees does the FLSA apply?

- Workers engaged in interstate commerce;
 - Production of goods for commerce;
 - Closely-related process or occupation directly essential (CRADE) to such production; or
 - Domestic service.
 - Engaging in “interstate commerce” which may include:
 - Making telephone calls to other states;
 - Typing letters to send to other states;
 - Processing credit card transactions; and
 - Traveling to other states.
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To which employers/employees does the FLSA apply? (Cont.)

- In the following categories:
 - At least 2 employees
 - Sales greater than \$500,000;
 - Engaged in operations of a hospital or institution primarily engaged in care of sick, aged, or mentally ill;
 - Schools whether for profit or not; or
 - Engaged in a public agency activity.
- Does not apply to independent contractors
 - But it is easy to misclassify workers

In Short, Almost All Employees


Almost every employee in the United States is covered by the FLSA

Examples of employees who may not be covered:

Employees working for small construction companies

Employees working for small independently owned retail or service businesses

Key FLSA Requirements


- Display poster
 - Record keeping: e.g. time and pay records
 - Pay at least federal minimum wage
 - \$7.25 per hour
 - Must pay higher of state or federal minimum. In Minnesota, the state minimum is usually higher.
 - Pay a 150% premium for any hours over 40 in one week
 - 168 consecutive hours
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FLSA Exempt Employees

- Partial Exemptions-Healthcare and public service agencies
 - White-Collar Exemptions
 - Executive,
 - Administrative, and
 - Professional Employees
 - Artistic or Creative Employees
 - Outside sales employees
 - Certain computer-related occupations
 - Certain commissioned sales employees
 - Agricultural/Farmworkers
 - Certain transportation-related employees
 - Domestic service workers
 - Plenty more along with some partial exemption
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White Collar Exemptions


For the exemptions to apply, an employee must meet all three elements:

- Salary Level;
 - Salary Basis; and
 - Job Duties
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- A decorative graphic consisting of several parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.


Safe Harbor

- The exemption will **not** be lost if the employer:
 - Has a clearly communicated policy prohibiting improper deductions and including a complaint mechanism;
 - Reimburses employees for any improper deductions; and
 - Makes a good faith commitment to comply in the future.
- Unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints


Executive Employees

- Compensation must exceed \$455 per week, *for now*.
 - Primary duties must consists of management.
 - Must customarily and regularly direct 2 or more employees.
 - Has authority to hire/fire employees or make recommendations given particular weight.
 - Regularly exercises discretionary powers.
 - Does not spend more than 20% of time on activities outside of the previous.
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20% Owner Executives

- The executive exemption also includes employees who
 - own at least a bona fide 20-percent equity interest in the enterprise
 - are actively engaged in management of the enterprise
 - The salary level and salary basis requirements do not apply to exempt 20% equity owners
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Administrative Employees

- Compensation must exceed \$455 per week, *for now*.
 - Primary duties must consist of office or non-manual work directly related to the management or general business operations; and
 - Primary duties must include the exercise of discretion and independent judgment on matters of significance.
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Management or General Business Operations

- ▶ Tax
 - ▶ Finance
 - ▶ Accounting
 - ▶ Budgeting
 - ▶ Auditing
 - ▶ Insurance
 - ▶ Quality Control
 - ▶ Purchasing
 - ▶ Procurement
 - ▶ Advertising
 - ▶ Marketing
 - ▶ Research
 - ▶ Safety and Health
 - ▶ Human Resources
 - ▶ Employee Benefits
 - ▶ Labor Relations
 - ▶ Public and Government Relations
 - ▶ Legal and Regulatory Compliance
 - ▶ Computer Network, Internet, and Database Administration
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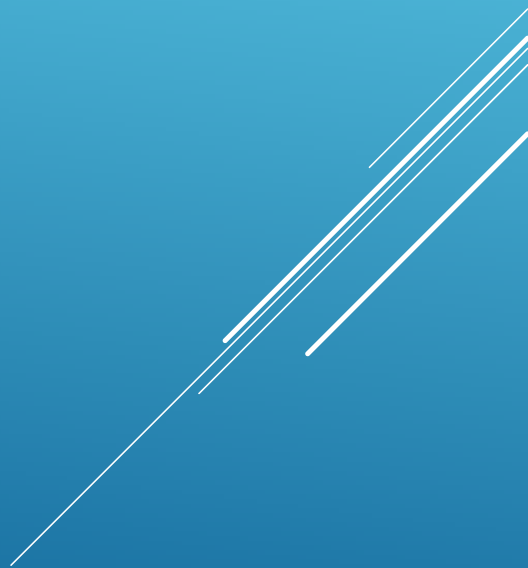
Professional Employees

- Compensation must exceed \$455 per week.
 - Primary duties must involve performance of work requiring advanced knowledge, which is primarily intellectual in nature and requires consistent exercise of discretion and judgment;
 - The knowledge must be in a field of science or learning; and
 - The knowledge must be customarily acquired by prolonged courses of specialized instruction.
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Field of Science or Learning

Occupations with recognized professional status, as distinguished from the mechanical arts or skilled trades

Law	Accounting	Actuarial Computation
Theology	Teaching	Physical Sciences
Medicine	Architecture	Chemical Sciences
Pharmacy	Engineering	Biological Sciences



Certain Medical Professionals

Doctors

Registered Nurses

Registered or certified medical technologists

3 years of pre-professional study in an accredited college or university, plus 1 year of professional study in an accredited school of medical technology

Dental hygienists

4 years of pre-professional and professional study in an accredited college or university


Certified physician assistants

4 years of pre-professional and professional study, including graduation from an accredited physician assistant program

Other Commonly Exempt Professions

- ▶ Lawyers
 - ▶ Teachers
 - ▶ Accountants
 - ▶ Pharmacists
 - ▶ Engineers
 - ▶ Actuaries
 - ▶ Chefs
 - ▶ Certified athletic trainers
 - ▶ Licensed funeral directors or embalmers
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Non-Exempt Professions

- ▶ Licensed practical nurses (LPNs)
 - ▶ Accounting clerks and bookkeepers who normally perform a great deal of routine work
 - ▶ Cooks who perform predominantly routine mental, manual, mechanical or physical work
 - ▶ Paralegals and legal assistants
 - ▶ Engineering technicians
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Salary Level – For Now

For most employees, the minimum salary level required for exemption is (currently) \$455 per week, but soon to change.

Must be paid “free and clear”


The \$455 per week may be paid in equivalent amounts for periods longer than one week

Biweekly: \$910.00


Semimonthly: \$985.83

Monthly: \$1,971.66


Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
 - The compensation cannot be reduced because of variations in the quality or quantity of the work performed
 - Must be paid the full salary for any week in which the employee performs *any* work
 - Need not be paid for any workweek when no work is performed
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Impermissible Salary Deductions

- An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the businesses
 - If the employee is ready, willing and able to work, deductions may not be made for time when work is not available
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Permissible Salary Deductions

- Seven exceptions from the “no pay-docking” rule
 1. Absence from work for one or more full days for personal reasons, other than sickness or disability
 2. Absence from work for one or more full days due to sickness or disability if deductions made under a bona fide plan, policy, or practice of providing wage replacement benefits for these types of absences
 3. To offset any amounts received as payment for jury fees, witness fees, or military pay
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Permissible Salary Deductions, cont.

4. Penalties imposed in good faith for violating safety rules of “major significance”
 5. Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of written workplace conduct rules
 6. Proportionate part of an employee’s full salary may be paid for time actually worked in the first and last weeks of employment
 7. Unpaid leave taken pursuant to the Family and Medical Leave Act
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Effect of Improper Salary Deductions

- An actual practice of making improper deductions from salary will result in the loss of the exemption
 - During the time period in which improper deductions were made,
 - For employees in the same job classifications, and
 - Working for the same managers responsible for the actual improper deductions
 - Isolated or inadvertent improper deductions, however, will not result in the loss of exempt status if the employer reimburses the employee
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Proposed Salary Level Increase

- Salary level increase: \$970 per week
 - This would push the annual minimum from \$23,660 to over \$50,000
 - In the future, the minimum salary level will continue to adjust with inflation.
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Likelihood/Timeframe

- It is likely that the changes will take effect by the end of the year.
 - There is no indication that the Department of Labor will change its mind or that the changes will be blocked by the court.
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How to Respond to the Change

- Audit employees' work hours to assess the best response for each position.
 - Increase any exempt employee to at least the new minimum salary.
 - Change employees who are paid less than the minimum to hourly status.
 - This will include paying overtime if an employee works more than 40 hours in a workweek.
 - As part of any response, employers should budget for changes in labor costs.
 - If positions are made non-exempt:
 - Keep track of hours including those worked remotely;
 - Be clear with employees about overtime expectations; and
 - Discipline employees if necessary for working unauthorized overtime, but
 - Do not fail to pay earned overtime even if it was not authorized.
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Questions

