

## Definitions and Examples

### **Primary Duty**

The principal, main, major or most important duty that the employee performs. The employee must perform work directly related to assisting with the running or servicing of the business AND typically represents at least 50% of the job function.

Factors to consider include:

- The relative importance of the major or most important duty as compared with other types of duties;
- The amount of time spent performing the major or most important duty;
- The employee's freedom to exercise discretion independent from direct supervision; and
- The relationship between the employee's salary and wages paid to other employees for the same kind of exempt work.

### **Management**

The U.S. Department of Labor defines management in the *Fair Labor Standards Act* to include, but limited to:

- Selecting, interviewing, and training of employees
- Setting and adjusting employee pay rates and hours of work
- Directing the work of two or more full time equivalent employees
- Appraising employee's performance for the purpose of recommending promotions, or other changes in status
- Handling employee complaints and grievances
- Disciplining employees
- Planning the work, determining the techniques, and proportioning the work among employees
- Determining the type of materials, supplies, machinery, equipment, or tools to be used or purchased
- Providing the safety and security of the employees and university property
- Planning and controlling the budget, and
- Monitoring and implementing legal compliance measures

When an employee spends less than 50% of his/her time performing management functions, he/she may still be considered an executive depending upon other factors such as:

- The relative importance of the managerial duties as opposed to the other types of duties
- The frequency with which the employee exercises discretionary powers
- The employee's relative freedom from supervision, and
- 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.

### **Particular Weight**

Defined in the employee position description as essential job function and not an occasional requirement. Factors to be considered:

- Whether it is defined as part of the employee's duties to make such recommendations and;
- The frequency with which such recommendations are requested, made, and relied upon.

# Fair Labor Standards Act Executive Exemption Verification Test

Date: \_\_\_\_\_ Department: \_\_\_\_\_

Position Number: \_\_\_\_\_ Job Title: \_\_\_\_\_

## **Instructions**

After reviewing the current position description, complete this form answering each question with a “yes” or “no” based upon the job functions listed in the position description.

## **Salary Test**

Employees must receive a gross pay amount of at least \$913.00 per week in order to be exempt from the FLSA provisions including overtime pay requirements. Pay rates cannot be prorated for employees that work less than 40 hours per week.

Is the employee compensated on a salary basis at a rate not less than the \$913.00 per week?

Yes  No

*\*If the answer is “no,” the employee is non-exempt. He or she must be paid an hourly wage and report hours as they are worked through the department’s chosen time keeping method.*

## **Executive Duties Test**

This test should be used for employees employed in a bona fide executive capacity.

Does the employee's **primary duty** consist of the **management** of a business unit of the university?

Yes  No

Does the employee customarily and regularly direct the work of two or more full time employees or their equivalent?

Yes  No

Does the employee have the authority to hire or fire other employees or are the employee's suggestions and recommendations as to hiring, firing, advancement, promotion or any other change of status of other employees given **particular weight**?

Yes  No

*\*If the answer to any of these questions is “no,” then the employee does not meet the Executive exemption requirements. However, they may meet either the Administrative or Professional exemption requirements.*

Form Completed By: \_\_\_\_\_  
(Name and R#)

Verification Approved By: \_\_\_\_\_  
(Department Leader and R#)