

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.

Creative Professional

The creative professional is highly dependent on the degree of invention, originality or talent that is exercised by the employee. As such, the exemption has to be done on a case-by-case basis (rather than by the job classification). The work is performed typically has to be highly conceptual where only a concept may be the starting point and must require a high degree of originality. The creative professional exemption generally applies to actors, musicians, composers, painters, essayists or screenwriters.

Learned Professional

The learned professional performs “work requiring advanced knowledge” which means the work is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment. Professional work is distinguished from work involving routine mental, manual, mechanical or physical work. A learned professional generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

The learned professional exemption is usually restricted to professions where specialized academic training is a standard prerequisite for entrance into the profession. This exemption does not apply to occupations in which most employees acquire their skill by experience rather than by advanced specialized intellectual instruction. The learned professional exemption generally applies to law, medicine, theology, engineering, architecture, teaching, and physical, chemical, and biological sciences.

Fair Labor Standards Act Creative and Learned Professional Exemption Verification Tests

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

The employee must be compensated on a salary basis at a rate 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.*

Creative Professional Exemption Test

This test should be used for employees whose primary duty is performance of creative work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Does the employee's primary duty qualify for a creative professional because it requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor?

Yes No

**If the answer to the above question 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.*

Learned Professional Exemption Test

This test should be used for employees whose primary duty is performance of creative work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Does the employee's primary duty qualify for a learned professional exemption because it requires the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment?

Yes No

Is the employee's advanced knowledge in a field of science or learning, and was this advanced knowledge acquired by a prolonged course of specialization intellectual instruction?

Yes No

Form Completed By: _____
(Name and R#)

Verification Approved By: _____
(Department Leader and R#)