

EMPLOYMENT LAW

Exempt or Non-Exempt?

**Some Common FLSA
Exemptions Explained**



Every employee is either exempt or non-exempt from minimum wage and overtime requirements. In order to determine whether an employee meets the three most common white collar exemptions, they must pass three tests.

The Three Tests

Generally, to qualify for a white collar exemption, employees must pass all three tests:

- 1 Salary Basis¹** The employee is paid a fixed salary.
- 2 Salary Level¹** The employee's salary meets the minimum amount.
- 3 Duties** The employee performs certain exempt job duties identified by the Department of Labor.



Three Common White Collar Exemptions Explained

With a few exceptions, an employee must meet all three tests to be **Exempt**. If an employee does not pass any one of the three tests, they are **Non-Exempt** and therefore eligible for overtime pay.

1. Executive Employee Exemption

Learn more about who qualifies for this exemption [here](#).



Kavita Patel
ASSISTANT SHOP MANAGER

✓ **Test 1:** Paid a salary

✓ **Test 2:** Paid \$1,000 per week (\$52,000 per year)

✗ **Test 3:** Manages two part-time employees

For the Executive Exemption to apply, Kavita's duties must meet all of the following requirements:

- Primary duty is managing the business or a recognized department within the business;
- Must customarily and regularly direct the work of at least two full-time employees or their equivalents; **and**
- Authority to hire or fire other employees, or their recommendations about hiring and firing or other terms of employment are given particular weight.

→ KAVITA DOES NOT QUALIFY FOR THIS EXEMPTION

Kavita is not an exempt executive employee because she does not manage enough employees. For the executive employee exemption, Kavita must manage at least two full-time employees or part-time employees with an equivalent number of hours as two full-time employees. Kavita manages two employees, but they are both part-time. Even if Kavita did manage at least two full-time equivalent employees, we would need to make sure that she meets the other components of the duties test.



2. Administrative Employee Exemption

Learn more about who qualifies for this exemption [here](#).



Tim Evans
DATA ENTRY CLERK

✓ **Test 1:** Paid a salary

✗ **Test 2:** Paid \$436 per week (\$22,700 per year)

✗ **Test 3:** Does not exercise discretion

Tim is paid on a salary basis, but for this exemption, Tim needs to be paid at least \$684 per week (\$35,568 annually). Additionally, under the Administrative Exemption's duties test, Tim's primary duties need to:

- Be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers: **and**
- Include the exercise of discretion and independent judgment on matters of significance.

→ TIM DOES NOT QUALIFY FOR THIS EXEMPTION

Tim is not an exempt administrative employee because Tim doesn't pass the salary level test or the job duties test. Additionally, Tim's role as a data entry clerk likely does not give him the authority to exercise discretion or independent judgment, which is a required component of the Administrative Exemption. But remember, always analyze actual job responsibilities — not just job titles — when making exemption decisions.



3. Professional Employee Exemption

Learn more about who qualifies for this exemption [here](#).



Anne Green
STORYBOARD ARTIST



Test 1: Paid a salary



Test 2: Paid \$1,115 per week (\$58,000 per year)



Test 3: Performs primary duty for a creative professional²

For the Creative Professional Exemption, Anne's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. This includes such fields as music, writing, acting, and the graphic arts.

→ **ANNE MAY OR MAY NOT MEET THE EXEMPTION**

Anne is paid a salary of at least \$684 per week, but it's not clear from her job title alone whether her duties meet the creative professional exemption. While Anne's job likely involves artistry, application of the exemption will depend on the extent of invention, imagination, originality or talent (as opposed to mere intelligence, diligence and accuracy) Anne must exercise to perform the job.

¹ The salary basis and salary level tests don't apply for certain exemptions (e.g. outside sales, teachers, lawyers, doctors).

² There is also a learned professional exemption. The primary duty must be performing work requiring advanced knowledge in a field of science or learning. The knowledge must typically be acquired by a prolonged course of specialized intellectual instructions (e.g. a degree).



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