



Audit: Test Your Overtime Compliance

To be considered exempt from overtime, an employee must generally be paid on a salary basis and their job duties must meet the DOL's standards for one of the six exemption categories discussed below. Use this self-audit to test whether you're properly classifying workers as exempt.

Executive Employee

Answer the following questions to determine whether you've misclassified a worker as an exempt executive:

1. Is the employee's primary duty managing the enterprise or a department or subdivision of the enterprise?
 - Yes
 - No

2. Does the employee customarily direct the work of two or more other employees or their equivalent?
 - Yes
 - No

3. Does the employee have the authority to hire or fire, and do their recommendations carry significant weight if unauthorized to make the final decision?
 - Yes
 - No

4. Is the employee paid the equivalent of at least \$684 per week on a salary basis?
 - Yes
 - No

Note: If the employee is at least a 20% owner of the business and meets requirements #1 and #2 above, they need not meet the salary requirement in #4 or the authority requirement in #3.

If you answered "No" to any of these questions, you may have misclassified the worker as an exempt executive.



Administrative Employee

Answer the following to determine whether a worker is misclassified as an exempt administrative employee:

1. Is the employee's primary duty performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers?
 Yes
 No
2. Does the employee exercise discretion and independent judgment with respect to matters of significance? That is, do they evaluate and compare possible courses of action and then make a decision or recommendation after considering the various possibilities?
 Yes
 No
3. Is the employee paid the equivalent of at least \$684 per week on a salary basis?
 Yes
 No

If you answered "No" to any of these questions, the employee may be misclassified as exempt administrative.

Learned Professional Employee

Answer the following to determine whether a worker is misclassified as an exempt learned professional:

1. Is the employee's primary duty to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction?
 Yes
 No
2. Is the advanced knowledge obtained by completing an academic course of study resulting in a four-year college degree or leading to certification?
 Yes
 No



3. Is the employee paid the equivalent of at least \$684 per week on a salary basis?

- Yes
- No

*If you answered “No” to any of these questions, the employee may be misclassified as an exempt learned professional. **Exception:** Those who have 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 but can still qualify as learned professionals.*

Creative Professional Employee

Answer the following to determine whether a worker is misclassified as an exempt creative professional:

1. Is the employee’s primary duty to perform work requiring invention, originality or talent in a recognized field of artistic endeavor such as music, writing, acting and the graphic arts?

- Yes
- No

2. Does the work require more than intelligence, diligence and accuracy (i.e., does it require “talent”)?

- Yes
- No

3. Is the employee paid the equivalent of at least \$684 per week on a salary basis?

- Yes
- No

If you answered “No” to these questions, you may have misclassified a worker as an exempt creative professional.

Computer Professional

Answer the following to determine whether a worker is misclassified as an exempt computer professional:



1. Is the employee paid at least \$684 per week on a salary or fee basis?

- Yes
- No

2. **Is the employee's primary duty:**

- Application of system analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- Design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- Design, testing, documentation, creation or modification of computer programs related to machine operating systems;
- A combination of the aforementioned duties requiring the same level of skills?

If you answered "No" to #1 or were unable to check any of the boxes under #2, you may have misclassified the worker as an exempt computer professional.

Outside Sales Employee

To determine whether a worker has been misclassified as an exempt outside sales employee, answer the following questions:

1. Is the worker's primary duty making outside sales?

- Yes
- No

2. Do they regularly work away from the company's place of business?

- Yes
- No

3. Does the worker sell tangible or intangible items, such as goods, insurance, stocks, bonds or real estate, or obtain orders or contracts for services or the use of facilities?

- Yes
- No

If you answered "No" to any of these questions, you may have misclassified the worker as an exempt outside sales employee.



Highly Compensated Employee (HCE)

To determine whether a worker has been misclassified as a highly compensated employee, answer the following questions:

1. Is the employee's primary duty performing office or non-manual work?

Yes

No

2. Does the employee customarily and regularly perform at least one exempt duty or responsibility from the administrative, executive or professional classification list?

Yes

No

3. Is the employee paid at least \$107,432 and at least \$684 per week on a salary or fee basis?

Yes

No

If you answered "No" to any of these questions, you may have misclassified the employee as an exempt highly compensated employee.