

The University of Southern Mississippi

FLSA Test

The Fair Labor Standards Act (FLSA) provides specific standards that help employers determine if their employees are exempt or non-exempt from the overtime standards defined by the FLSA. If the duties and responsibilities of a position meet the requirements as defined by each test, the position is considered to be exempt from the standards of the FLSA. An employee's actual duties and salary must meet the tests of the exemption.

There are three basic types of exemption tests used here at the University. These tests are the Executive Employee Test, the Administrative Employee Test, and the Professional Employee Test.

Executive Employee:

The Department of Labor (DOL) describes this employee as: Primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or sub-division thereof and such duty includes the customary and regular direction of the work of two or more employees in the establishment or department. The above would include the ability to hire and fire. Here at the University, an Executive type of employee is usually considered a department head.

Administrative Employee:

The DOL describes this employee as follows: The primary duty is the performance of office or non-manual work directly related to management policies or general business operations of the employer and such duty includes work requiring the exercise of discretion and independent judgment, rather than merely using skills to follow department or University procedures.

An employee who exercises discretion or independent judgement is able to make decisions freely without needing to consult a superior. The work must require the employee to compare and evaluate possible courses of conduct and act or make a decision after various possibilities have been considered. This decision-making power should be real and substantial, free from immediate supervision, and exercised with regard to matters of consequence.

The phrase "directly related to management policies or general business operations of the employer" describes those types of activities relating to the administrative operations of an organization. Some positions that usually fall under this statement are Assistant Superintendents, Vice Principals, certain types of Buyers, Office Managers who exercise discretion and judgment as defined above, and most positions that exist to manage a discrete function or department or exists to advise department heads on general business operations. This can be further explained with an example: a Police Chief is in charge of the management and daily operations of the Police Department, whereas a Policeman exists to provide the service (or product) of law enforcement. So, by this statement the Police Chief is exempt and the Policeman is non-exempt, even though you can argue that the Policeman uses discretion and independent judgement.

The DOL has determined that positions similar in nature to a paralegal are non-exempt positions. In the DOL's view a paralegal does not exercise discretion and independent judgment as described above. FLSA states that any position that exists because of clerical duties or any position requiring more than 20% of working time spent on clerical tasks are non-exempt positions in nature.

Professional Employee:

The DOL describes this employee as follows: Primary duty requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study, including work that requires the consistent exercise of discretion and judgment or consist of the performance of work in a recognized field of artistic endeavor, including work that requires invention, imagination or talent. There are three types of professional employees:

- (1) The employee in a learned profession includes: law, medicine, nursing, accountancy, architecture, engineering, teaching, etc.
- (2) The employee whose work is original and creative in character which includes artists, musicians, designers, etc.
- (3) Those employed as athletes.

Simply having a degree is not enough to make an employee an exempt professional. The FLSA is task focused. The employee must still exercise discretion and judgment on the job and perform intellectual and varied work.

Watch out for misleading job titles. An important-sounding job title does not determine an employee's exempt status.

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Employee Name: _____ SSN: _____

Position Title: _____ Level: _____

Department Name: _____ Account: _____

Below are three FLSA exemption tests. For more information on each test, see the attached information page.

**Please check all that apply to the position.*

Executive Test

(To be considered exempt as an Executive, the position must qualify in all seven categories listed below)

1. ___ Manages an enterprise or a customarily recognized department or subdivision; and
2. ___ Customarily and regularly directs work of two or more employees; and
3. ___ Hires or fires employees, or recommendations are given particular weight; and
4. ___ Customarily and regularly exercises discretionary powers; and
5. ___ Devotes no more than 20% of weekly hours to work not closely related to above; and
6. ___ Compensated at a rate of \$155 or more per week; and
7. ___ Receives a salary which is not reduced for quality or quantity of work.

Administrative Test

(To be considered exempt as an Administrative employee, the position must qualify in categories 2, 4, 5, and 6 and one item in category 1 and 3)

1. ___ Performs office or non-manual work directly related to management policies or general business operations; or
___ Performs work that is directly related to academic instruction or training carried on in the administration of a school system or educational establishment; and
2. ___ Customarily and regularly exercises discretion and independent judgment; and
3. ___ Regularly and directly assists an employee in a bona fide executive or administrative capacity; or
___ Performs specialized or technical work requiring special training experience or knowledge under only general supervision; or
___ Executes special assignments and tasks under only general supervision; and
4. ___ Devotes no more than 20% of weekly hours to work not directly or closely related to above; and
5. ___ Compensated at a rate of \$155 or more per week; and
6. ___ Receives a salary which is not reduced for quality or quantity of work.

Professional Test

(To be considered exempt as a Professional employee, the position must qualify in categories 2, 3, 4, 5, and 6 and one item in category 1)

1. ___ Primary duty requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study; or
___ Performs work which is original and creative in character, in a recognized field of artistic endeavor, requiring invention, imagination or talent of employee; or
___ Imparts knowledge through teaching, tutoring, instructing or lecturing as a recognized or certified teacher; and
2. ___ Work requires consistent exercise of discretion and judgment in its performance; and
3. ___ Performs work which is predominantly intellectual and varied and is of a character that the output or result cannot be standardized in terms of time; and
4. ___ Devotes no more than 20% of weekly hours to work not closely related to the performance of work described above; and
5. ___ Compensated at a rate of no less than \$170 per week; and
6. ___ Receives a salary which is not reduced for quality or quantity of work.

Supervisor's Signature

Date

Dean, Director, or Dept. Head Signature

Date

Print/Type Name

Telephone

Print/Type Name

Telephone