



WAKE FOREST
UNIVERSITY

Human Resources

Decision-Making on Exempt/Non-Exempt Status

A Resource for Department/Office Heads and Other Managers

If you have any questions about these materials,
please contact Human Resources

DECISION-MAKING ON EXEMPT / NON-EXEMPT STATUS

A Resource for Department/Office Heads and Other Managers

The Fair Labor Standards Act (FLSA) provides the testing criteria to assist in classifying jobs as exempt or non-exempt. As you may have experienced, it can be a challenge to sort through the FLSA guidelines, as well as to gather all of the pertinent job information in order to make a sound decision.

Human Resources developed this packet of information to: (1) summarize the applicable FLSA guidelines, and (2) emphasize the information that should be considered in an exempt/non-exempt job analysis.

Human Resources (Compensation Manager) is available to assist you in your review.

This packet includes:

1. **Overview of the FLSA Law and Exempt Status** - common questions regarding the application of the FLSA law, examples of exempt and non-exempt work, and a summary of the consequences when violations occur
2. **Differences Between Exempt and Non-Exempt Work** - sample activities at non-exempt and exempt levels
3. **Exemptions - Test Criteria** - a discussion of the exemption types (executive, administrative and professional)
4. **Exemption Decision Trees** - models that walk through the test criteria, by exemption type (executive, administrative and professional)
5. **Checklist for Exemption Review Process** - a guide to assist you in the review process

OVERVIEW OF THE FLSA LAW AND EXEMPT STATUS

Question 1: What is the FLSA?

The Fair Labor Standards Act (FLSA), also called the Wage and Hour Law, is enforced by the US Department of Labor. Its primary objective is to eliminate detrimental working conditions. FLSA establishes protections for employees regarding minimum wage, child labor and overtime pay provisions. In addition, the regulations identify and exclude certain workers (exempt) from FLSA coverage.

Question 2: What does it mean for a position to be exempt or non-exempt?

Simply put, employees holding *non-exempt* positions are those that must be paid in accordance with the overtime provisions of FLSA. *Exempt* positions, on the other hand are excluded (exempted) from coverage and do not need to be paid overtime.

Question 3: Does the law apply to the individual's job or the position classification?

For the most part, Wake Forest University determines exemption by generic classifications rather than by individual job. For example, the position classification of Accountant is exempt; the position classification of Accounting Assistant is non-exempt.

It is important that the employees assigned to exempt classifications perform work that meets the standards for exemption. The law's objective is to protect the employee, so FLSA assumes all positions are non-exempt and subject to the law. It is the employer's responsibility to *prove* that a job is exempt.

Question 4: What are the consequences if FLSA is violated?

The Fair Labor Standards Act can be enforced by private employee lawsuits or by actions taken by the US Department of Labor (DOL). Just one employee's complaint to an agency has the potential of initiating a state or federal audit of the jobs of the entire University.

The DOL also has the right to seek an injunction, which means that the Secretary of Labor files a restraint prohibiting future violations of FLSA laws.

Damages may include back pay (statute of limitations is 2 years for unintentional violations and 3 years for willful violations), penalties, attorney fees, and court costs. In a lawsuit, (as opposed to an administrative audit by the DOL), employees generally collect back pay *and* liquidated damages in the amount of back pay (double damages).

Question 5: How does an employer decide if a position's duties and responsibilities are exempt according to the FLSA regulations?

There are three types of exemptions under FLSA: Executive, Administrative and Professional. The exempt test criteria differ by type and are detailed in the *FLSA Decision Tree*, included in this packet.

The FLSA regulations provide guidelines and examples to assist the employer in making exempt/non-exempt determinations. Essentially, the law guides the employer in the evaluation of two key criteria:

- a) The importance of the work as defined by the law's guidelines, and
- b) Within the context of its importance, the extent and magnitude of the position's independent discretion.

A. Determining the Importance of the Work

To be exempt, work must be of substantial importance to the management or operations of a business. For example, a position whose primary function is to participate in the development of business operations or management policies would typically be exempt. In contrast, a position whose main responsibility is to ensure that management policies are being followed would not be considered exempt.

Exempt employees make analyses and draw conclusions, which are important to the determination of management policies or general business operations. Importance can be measured by the degree and impact of:

- Advising
- Planning
- Negotiating
- Representing the University
- Purchasing
- Marketing
- Fundraising
- Researching
- Controlling

Types of positions that typically perform this kind of work are:

- Advisory specialists to management (financial analysts, auditors)
- Executives, managers and supervisors
- Professionals such as lawyers, accountants and teachers
- Employees who work on special assignments or in public relations type positions (e.g., Development Officers)

B. Defining the Degree of Independent Discretion

- Independent discretion means comparing and evaluating possible courses of conduct and recommending or making a decision after the various possibilities have been considered. (Recommendations need to have strong influence and are usually adopted with minimal review from higher levels of authority.)
- Independent discretion must be free from immediate direction or supervision *and* involve matters of significance.
- Independent discretion must be different from the use of skill or knowledge in applying techniques or procedures according to specific standards.
- Independent discretion must not deal with matters of little consequence to the overall business operation.

Decisions in significant matters refer "to the kinds of decisions normally made by persons who formulate or participate in the formulation of policy, or who exercise authority within a wide range to commit their employer in substantial respects financially or otherwise."

An exempt employee must exercise this kind of discretion and independent judgment customarily and regularly (day to day).

Question 6: How does an employer decide if a position's duties and responsibilities are non-exempt according to the FLSA regulations?

FLSA defines a non-exempt position as one that:

- Uses skill or knowledge in applying techniques or procedures according to specific standards.
- Makes decisions related to matters which usually will not have a lasting impact on the organization.
- Performs duties that are procedural, manual, mechanical, physical or routine.

DIFFERENCES BETWEEN EXEMPT AND NON-EXEMPT WORK

Activity	Non-Exempt	Exempt
<p>Research</p> <p><i>WFU Examples:</i></p>	<p>Collects and compiles information. Reviews for completeness, identifies missing documentation. Processes documents against an established standard by following prescribed audit lists.</p> <p><i>Accounting Assistant</i></p>	<p>Identifies root cause problems. Investigates applicable laws, policies and procedures. Ascertains intent of transactions/issues. Creates "historic" record of events and repercussions.</p> <p><i>Accountant</i></p>
<p>Analysis</p> <p><i>WFU Examples:</i></p>	<p>Identifies problem or issue and selects or determines appropriate action within prescribed guidelines. Analyses based on reviewing the documentation against established standards.</p> <p><i>Life Sciences Technician</i></p>	<p>Compares and evaluates possible courses of conduct; acts after considering various possibilities. Considers the cause and effect of historic activities and the impact and potential repercussions of possible actions.</p> <p><i>Life Sciences Research Technician</i></p>
<p>Decision-Making</p> <p><i>WFU Examples:</i></p>	<p>Applies skills and knowledge in following prescribed procedures and determines whether specified standards are being met. Uses knowledge in determining which procedures to follow.</p> <p><i>Student Services Specialist</i></p>	<p>Has the power to make an independent choice free from immediate supervision. The decisions may be in the form of a recommendation usually followed with minimal, if any, review from higher levels of authority.</p> <p><i>Student Services Officer</i></p>
<p>Judgment</p> <p><i>WFU Examples:</i></p>	<p>Determines if documentation meets standards.</p> <p><i>Procurement Assistant</i></p>	<p>Determines how best to resolve the situation.</p> <p><i>Procurement Analyst</i></p>
<p>Independent Discretion</p> <p><i>WFU Examples:</i></p>	<p>Discretion applies to the production processes as opposed to the company's policies and operations. Consequences may lead to loss through the choice of wrong techniques, improper application of skills, neglect, or failure to follow instructions.</p> <p><i>Administrative Associate</i></p>	<p>Makes decisions of consequence of real and substantial significance regarding the policies or general operations of the business. Ability to deviate from standard policies and procedures.</p> <p><i>Administrative Services Manager</i></p>

EXEMPTIONS – TEST CRITERIA EXECUTIVE – ADMINISTRATIVE - PROFESSIONAL

Summary of the Three Types of Exemption Under FLSA

Generally, the federal (FLSA) guidelines provide the information to make an informed decision regarding exempt or non-exempt status. In all cases, Wake Forest University imposes a strict guideline as to percent time spent performing exempt duties (80%).

And, when a position is borderline, it can be especially difficult to make a judgment between the exempt and non-exempt designation. When the exempt designation is in doubt, the decision must be for non-exempt status.

FLSA provides white-collar exemption for three main categories of positions: Executive, Administrative, and Professional. A summary of the kinds of positions that typically fall in those categories follow. The next three pages give the criteria that **must** apply for a position to qualify as exempt.

Executive Exemption

Primarily used for positions that are managerial in nature, directing the activities of at least two full-time subordinates.

Administrative Exemption

Primarily used for positions that perform administrative work related to management policies or general business operations, where the primary duties require the exercise of discretion and independent judgment.

Professional Exemption

Primarily used for positions that require knowledge of an advanced type in a field of science or learning.

EXEMPTION - TEST CRITERIA FOR EXECUTIVE

Duties

The primary duties must be managerial in nature (as described below) and be performed at least 80% of the time:

1. Supervise at least two full-time employees. This includes persons who would not normally be considered "executives", such as any first-line supervisor who satisfies the requirements of the exemption, **and**
2. Primary duties must (1) consist of the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof and (2) include the customary and regular direction of the work of two or more other employees therein.

Examples of exempt executive functions include interviewing, selecting and training employees; setting and adjusting their rates of pay and hours of work; directing their work; handling their complaints and grievances and disciplining them when necessary; planning the work; determining the techniques to be used; providing for the safety of employees and the property; and apportioning the work among the workers.

EXEMPTION - TEST CRITERIA FOR ADMINISTRATIVE

Duties

The primary duties must be administrative in nature, as listed below, and be performed at least 80% of the time:

1. The primary duty consists of non-manual or office work related to management policies or general business operations, **or**
2. Functions in the administration of a school system or educational establishment, in work directly related to the academic instruction or training conducted there, **and**
3. Must include work requiring the exercise of discretion and independent judgment on matters of significance.

The administrative exemption applies principally to employees who do not supervise others, but who (1) work as executive assistants, (2) work in a staff capacity such as financial analysts and human resources consultants, or (3) perform special assignments such as high-level project work for executive staff, organization planners, or account executive work.

Administrative positions help set policy. The key phrase is that the position performs work related to the management of the business or business operations. Administrative positions perform work under only general supervision, along specialized or technical lines or special assignments.

EXEMPTION - TEST CRITERIA FOR PROFESSIONAL

Duties

The primary duties must be professional in nature, as listed below, and be performed at least 80% of the time:

1. The primary duty requires knowledge of an advanced type in a field of science or learning, or work as a teacher and consistently exercises discretion and judgment, **or**
2. The primary duty must consist of the performance of original and creative work requiring invention, imagination or talent in a recognized field of artistic endeavor.

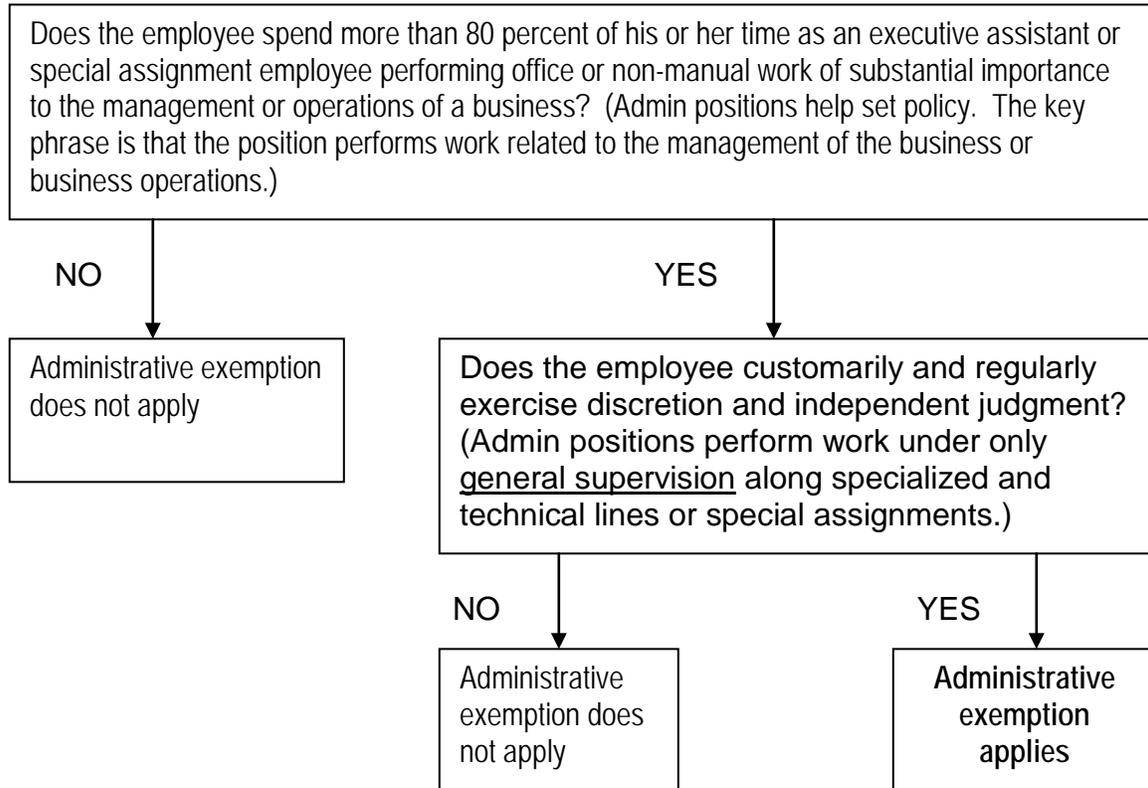
The exemption for professional employees was expanded by the Department of Labor in 1992 to include highly skilled computer-related workers. In general, these employees will qualify for the white-collar exemption test if their primary duties involve:

- the application of systems analysis techniques and procedures, to include consultations with users to determine hardware and software specifications;
- the design of computer systems based on and related to user specifications;
- the creation or modification of computer programs based on/related to system design specifications;
- the creation or modification of computer programs related to machine operating systems;
or
- a combination of the above duties, where the performance of those duties requires the same level of skill.

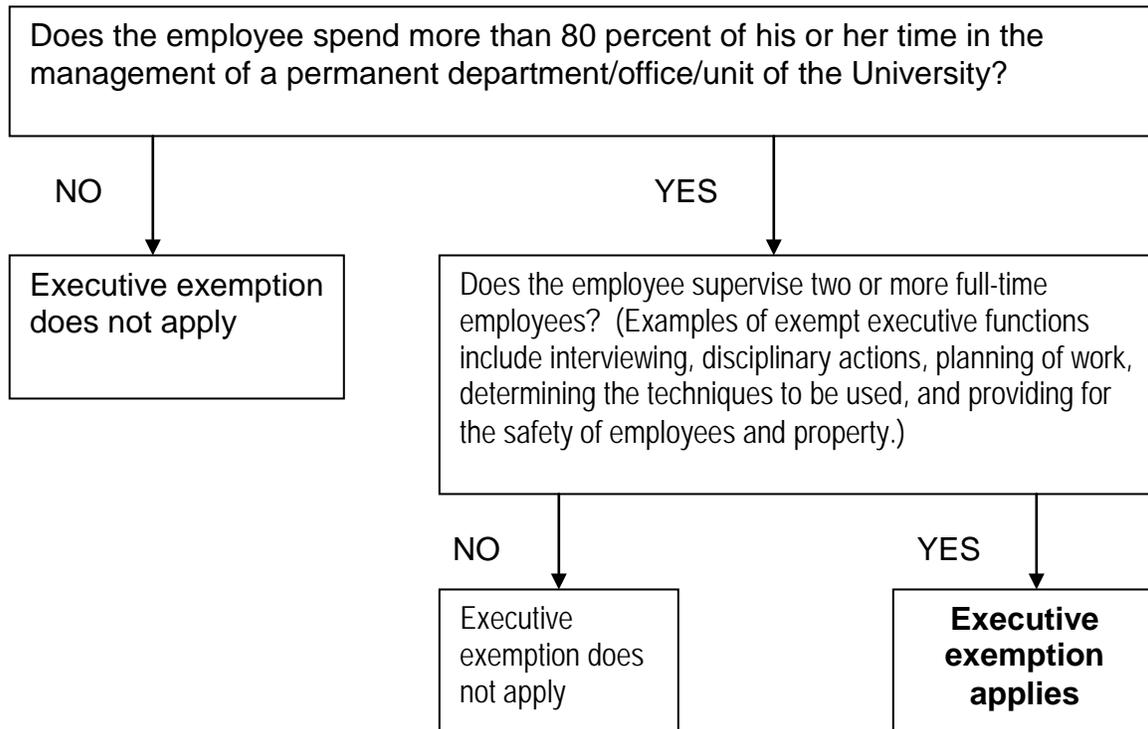
To qualify for the exemption for highly skilled employees in computer-related fields, however, the employee also must be paid:

- at least \$170 on a salary basis each week and meet the primary duty requirements of the general test (see above);
- at least \$250 on a salary basis each week and meet primary duty requirements of the simplified test (see above); or
- at least \$27.63 an hour if they are paid on an hourly basis. [Note: Previously, highly skilled computer-related workers were exempt from overtime if their hourly rate of pay was more than 6½ times the minimum wage. However, the Small Business Job Protection Act of 1996 changed the threshold to \$27.63 per hour, regardless of the minimum wage.] (57 Fed. Reg. 46,742 (1992); 29 C.F.R. § 541.3(a)(4), 541.303)

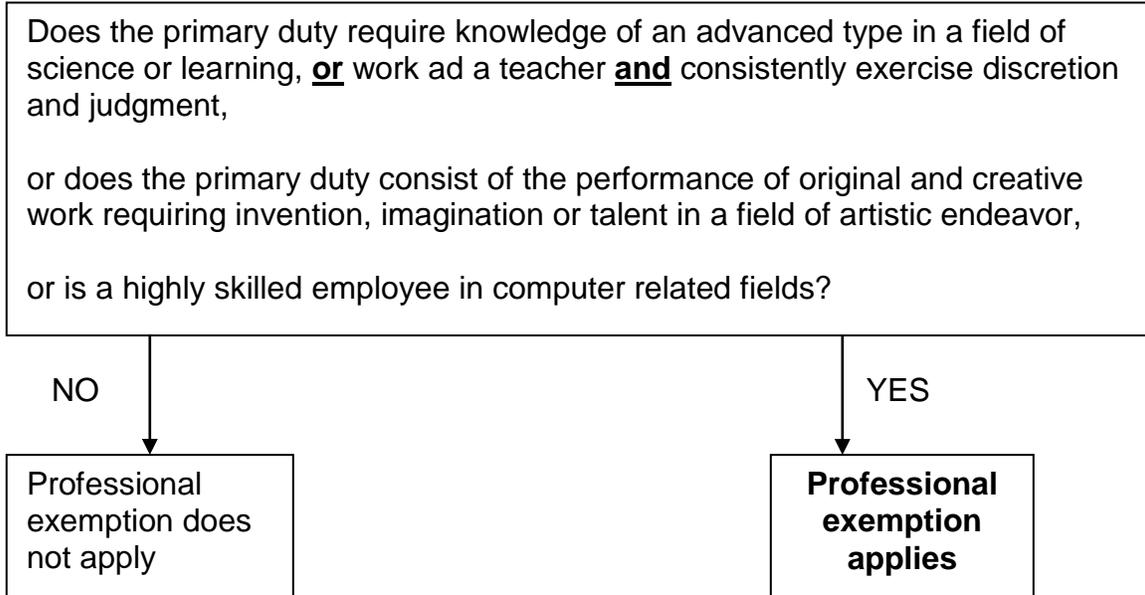
Administrative Exemption Decision Tree



Executive Exemption Decision Tree



Professional Exemption Decision Tree



CHECKLIST FOR EXEMPTION REVIEW PROCESS

This checklist provides a road map to points that should be considered and tools to use when determining the exempt status of a position.

- _____ Review the *Overview of the FLSA Law and Exempt Status (Q & A)*
- _____ Review the current job description
- _____ Gather additional information from supervisor and/or incumbent on the following topics:
 - _____ what kinds of decisions are made?
 - _____ what initiates the decision-making process?
 - _____ when are decisions made - in the absence of the supervisor or shared with the supervisor?
 - _____ how are decisions made - what is used in deciding?
 - _____ by whom are the decisions reviewed and when?
 - _____ what are the results, consequences and impact of the decisions?
 - _____ are there any shared responsibilities with peers or managers?
 - _____ what are the skills and knowledge needed for the job?
- _____ Review the *Exemptions - Test Criteria* to determine the appropriate FLSA exemption type (executive, administrative or professional).
- _____ Review the *Exemption Decision Tree* and the *Exemptions - Test Criteria* to help you determine if the position is exempt or non-exempt.
- _____ Consult with and/or submit an Exemption Worksheet to the Human Resources Department (Compensation Manager).