

OVERTIME EXEMPTIONS IN HIGHER EDUCATION



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Overtime - Basics

- What is overtime pay?
 - Compensation at one and one-half times an employee's normal hourly rate for any hours above forty worked in a workweek.
- Who is entitled to overtime pay?
 - Under the Fair Labor Standards Act, every worker is entitled to overtime, UNLESS an exemption applies.
- The most common exemptions – usually called the “white collar” exemptions – are for *executive, administrative and professional* (“EAP”) employees.

Overtime – White Collar (“EAP”) Exemptions

- To be exempt, an employee must satisfy three tests: the “salary basis” test, the “salary level” test, and a “duties test.”
- It is NOT the case that any employee paid “on salary” is automatically exempt – i.e., not entitled to overtime pay.

Salary Basis Test

- The individual must be paid on a salary basis – i.e., the employee receives a predetermined amount of compensation on a weekly, or less frequent, basis, which cannot be reduced based on the quality or quantity of the employee’s work.
- Subject to very limited exceptions, an employee must be paid in full for any week in which s/he performs any work.

Salary Level Test

- An exempt employee must receive a salary at a rate of at least \$455 per week (under federal law).
 - In Connecticut, the threshold level is \$475/week.
- Note: the USDOL is considering revisions to the regulations governing the EAP exemptions, including the threshold salary level. Until the Department issues its final rule, it will continue to enforce the \$455/week threshold.

The Duties Tests – Executive Employees

- The employee's primary duty is managing the enterprise, or a recognized division of the enterprise.
- The employee supervises at least two full-time-equivalents.
- The employee has authority to hire and fire, or his/her opinions are given great weight in the process.

The Duties Tests – Administrative Employees

- The employee's primary duty is office or non-manual work directly related to management or general business operations of the employer or the employer's customers.
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
- In higher education, employees such as admissions counselors or student financial aid officers might qualify under this exemption.

Academic Administrative Employees

- In an educational establishment, employees performing academic administrative functions directly related to academic instruction or training may qualify for this exemption.
- Examples of such employees generally include department heads, academic counselors and advisors, and “intervention specialists who are available to respond to student academic issues.”

The Duties Tests – Professional Exemption

- For “learned professionals,” the primary duty is the performance of work requiring advanced knowledge in a field of science or learning, predominantly intellectual and including the consistent exercise of discretion and judgment.
- The job requires advanced knowledge customarily acquired by a prolonged course of specialized intellectual instruction.
- For “creative professionals,” the work requires invention, imagination, originality, or talent in a recognized field of creative or artistic endeavor.

“Learned Professionals” in Higher Education

- Apart from teachers, learned professionals in higher education might include:
 - Psychologists
 - Certified athletic trainers
 - Librarians
 - Postdoctoral fellows
 - In-house counsel
 - CPAs

Teachers as Exempt Professionals

- Teachers are exempt if their primary duty is teaching, tutoring, instructing, or lecturing to impart knowledge.
- If this duty requirement is met, the salary level and salary basis tests do not apply.
- Professors, instructors, and adjunct professors typically qualify for this exemption.
- Faculty members who teach on-line or remotely may qualify.
- A teacher who spends a considerable amount of time in extracurricular activities (coaching, supervising student organizations) may qualify, provided that teaching is the primary duty.

Coaches

- A coach whose primary duty is instructing student-athletes in how to perform their sport may qualify for the teacher exemption.
- A coach whose primary duties involve recruiting or other non-instructional functions will not qualify.
- “The amount of time the coach spends instructing student-athletes in a team sport is relevant, but not the exclusive factor, in determining the coach’s exempt status.”

Students

- Most student-employees are hourly non-exempt workers.
- *Graduate Teaching Assistants* may qualify under the teacher exemption if teaching is their primary duty.
- *Research Assistants* who work under faculty supervision while obtaining a degree are not considered employees by the DOL.
- *Student Residential Assistants* are also not considered employees by the DOL (at least where their compensation is in the form of reduced room or board charges, or tuition credits).

Other FLSA Exemptions: Highly Compensated Employees

- *Not recognized under Connecticut law.*
- Under federal law, employees who customarily and regularly perform at least one of the duties of an exempt executive, administrative, or professional employee, AND
- who are paid total annual compensation of at least \$100,000, at least \$455 per week of which must be paid on a salary or fee basis (and the remainder of which may be paid through a combination of nondiscretionary bonuses, commissions, and other forms of nondiscretionary deferred compensation) are exempt from overtime pay requirements.

Other FLSA Exemptions: Computer Employees

- *Not recognized under Connecticut law.*
- Earns at least \$455 per week on a salary or fee basis, OR
- If compensated on an hourly basis, earns at least \$27.63/hour;

AND

- Is employed as a computer systems analyst, programmer, software engineer or other similarly skilled worker in the computer field;

AND

Other FLSA Exemptions: Computer Employees

- Has primary duty consisting of:
 - Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; OR
 - 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; OR
 - Design, documentation, testing, creation or modification of computer programs related to machine operating systems; OR
 - A combination of the above duties, the performance of which requires the same level of skills.

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