



EMPLOYER LAW BLOG

READY FOR 12/1? Take the Exemption Tests

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The Department of Labor's Final Rule on white collar exemptions takes effect on December 1, 2016. Are you ready? You can answer this question with three simple tests. An employee must pass all three tests to be eligible for exemption from overtime pay.

1. The Salary Basis Test

First, the exempt employee must be paid on a salary basis rather than an hourly basis. The salary must not be subject to reduction based on quality or quantity of work.

2. The Salary Level Test

Second, the employee's salary must meet the minimum salary level. Currently, the minimum salary level is \$455 per week, which is \$23,660 per year. On December 1, that minimum salary level will increase to \$913 per week, which is \$47,476 per year.

3. The Job Duties Test

Third, the employee's primary job duty must involve the kind of work associated with exempt executive, administrative or professional employees.

What are these duties?

Executive -The primary duty must be managing the enterprise or a recognized department of the enterprise. In addition, the employee must customarily and regularly direct the work of at least two full-time employees or their equivalent. The employee must also have the authority to hire or fire other employees, or the suggestions or recommendations to hire, fire, advance, promote or change the status of other employees must be given particular weight.

Administrative - The primary duty must 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. In addition, the employee's primary duty must include the exercise of discretions and independent judgment with respect to matters of significance.

Professional – There are several different types of professional employees, including “learned professionals” and “creative professionals.” The “learned professional” primarily performs work that requires advanced knowledge in the field of science or learning, usually obtained through a degree. The “creative professional” primarily performs work that requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

If the employee passes all three tests, he or she will be eligible for the exemption from overtime pay. However, if the employee fails any of these tests, that employee will not be eligible for the exemption and would have to be paid time and a half for work over 40 hours per week and would have to be the minimum wage.