

Questionnaire to Determine FLSA Exempt Status

Instructions

This questionnaire can be used to help determine whether an employee is exempt or nonexempt under the Fair Labor Standards Act (FLSA), though it is not a substitute for obtaining advice of counsel, nor does this questionnaire constitute legal advice. To determine whether an employee qualifies for an exemption, answer the questions and then evaluate the criteria for each relevant exemption category (executive, administrative, professional, computer professional, outside sales, commission sales, or highly compensated employees) based on responses to the questions. Note that a single employee may qualify for more than one exemption.

In the charts below, indicate whether each criterion is met by checking “[] YES” or “[] NO” in the left-hand column.

Unless otherwise indicated, all criteria in the chart or charts for a particular exemption must be satisfied for the employee to be exempt. In other words, if you check “[] NO” for one or more criterion, the employee does not qualify for that exemption.

Position

Job Title:	Employee Name:
Department:	Date Completed:
Location:	Completed By:
Supervisor:	Sources of Information:

Salary Basis Test

Instructions: Complete this section of the questionnaire if you are evaluating whether an employee qualifies for the executive, administrative, professional, computer professional, or highly compensated exemptions. After you have completed this section of the questionnaire, also complete the section relating to the duties of the relevant exemption to determine if the employee qualifies for that exemption. Unless otherwise indicated in the relevant exemption section, the employee must satisfy all criteria for the salary basis test and duties test (as evaluated in the charts below) to be exempt.

How is the employee paid?

_____ Salary.

Hourly.

Daily.

Per shift.

Other. Please explain. _____

What is the employee's rate of pay?

Is the employee guaranteed any minimum weekly compensation?

Yes / No

If yes, how much guaranteed compensation is the employee paid per week?

How frequently is the employee paid?

May the employee's compensation be reduced for any reason?

Yes / No

If yes, please explain:

Are any deductions taken from the employee's pay?

Yes / No

If yes, please explain:

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking “[] YES” or “[] NO” in the left-hand column.

[] YES / [] NO	Does the employee receive a guaranteed minimum amount of compensation for each workweek that may not be reduced because of either the quality or quantity of work performed by the employee?
[] YES / [] NO	Is the guaranteed minimum compensation equivalent to at least \$455 per week (\$913 per week effective December 1, 2016)?
[] YES / [] NO	Are deductions from the employee’s pay, if any, limited to those deductions permitted by federal regulations?

Administrative Exemption

Instructions: To determine whether an employee is exempt under the administrative exemption, evaluate the criteria in the sections titled:

- Salary or Fee Basis for Administrative Employees.
- Administrative Job Duties.

Indicate whether each criterion in the charts below is met by checking “[] YES” or “[] NO” in the left-hand column.

All criteria in the charts in both sections must be satisfied for the employee to be exempt under the administrative exemption.

Salary or Fee Basis for Administrative Employees

How is the employee paid?

___ Salary.

___ Hourly.

___ Daily.

___ Per shift.

___ Fee. Please explain. _____

___ Other. Please explain. _____

What is the employee's rate of pay?

Is the employee guaranteed any minimum weekly compensation?

Yes / No

If yes, how much guaranteed compensation is the employee paid per week?

How frequently is the employee paid?

May the employee's compensation be reduced for any reason?

Yes / No

If yes, please explain:

Are any deductions taken from the employee's pay?

Yes / No

If yes, please explain:

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking "[] YES" or "[] NO" in the left-hand column.

<input type="checkbox"/> YES / <input type="checkbox"/> NO	Is the employee paid on either: <ul style="list-style-type: none">• A basis that satisfies all of the criteria in the Salary Basis Test section above?
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	<ul style="list-style-type: none"> • A fee basis under which: <ul style="list-style-type: none"> • the employee is paid an agreed amount for completing a discrete job, regardless of how long it takes to complete the job; and • the fee payment meets the minimum amount required under the Salary Basis Test section above (\$455 per week) (\$913 per week effective December 1, 2016)?
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Administrative Job Duties

Describe the employee’s job duties:

How much time does the employee spend on each job duty? (Confirm that hours or percentages reported add up to an accurate weekly total.)

What is the employee’s primary job duty(ies)?

How much supervision does the employee receive with respect to each job duty? (Include frequency and extent, for example, daily, weekly, minimal supervision, or micromanaged.)

How much discretion and independent judgment does the employee exercise with respect to each job duty? (Describe the frequency, for example, daily, weekly, or regularly. Provide examples.)

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking “[] YES” or “[] NO” in the left-hand column.

[] YES / [] NO	Is the employee’s primary duty 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?
[] YES / [] NO	Does the employee’s primary duty involve the regular exercise of discretion and independent judgment with respect to matters of significance?

Executive Exemption

Instructions: To determine whether an employee is exempt under the executive exemption, evaluate the criteria in the section titled Business Owner. Indicate whether each criterion in the chart in that section is met by checking “[] YES” or “[] NO” in the left-hand column. All criteria in the chart must be satisfied for the employee to be exempt under the executive exemption as a business owner.

If the employee is not a business owner, evaluate the criteria in the sections titled:

- Salary Basis for Executive Employees.
- Executive Job Duties.

Indicate whether each criterion in the charts in both of those sections is met by checking “[] YES” or “[] NO” in the left-hand column. All criteria in the charts in both the Salary Basis and Executive Job Duties sections must be satisfied for the employee to be an exempt executive if they are not a business owner.

Business Owner

Does the employee own any equity interest in the employer’s business?

___ Yes / ___ No

If yes, what is the employee's ownership interest?

Is the employee actively engaged in management of the business?

___ Yes / ___ No

If yes, explain the employee's management duties and responsibilities.

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking "[] YES" or "[] NO" in the left-hand column.

<input type="checkbox"/> YES / <input type="checkbox"/> NO	Does the employee own at least 20% of the equity in the business?
<input type="checkbox"/> YES / <input type="checkbox"/> NO	Is the employee actively engaged in the management of the business?

Salary Basis for Executive Employees

How is the employee paid?

___ Salary.

___ Hourly.

___ Daily.

___ Per shift.

___ Fee. Please explain. _____

___ Other. Please explain. _____

What is the employee's rate of pay?

Is the employee guaranteed any minimum weekly compensation?

Yes / No

If yes, how much guaranteed compensation is the employee paid per week?

How frequently is the employee paid?

May the employee's compensation be reduced for any reason?

Yes / No

If yes, please explain:

Are any deductions taken from the employee's pay?

Yes / No

If yes, please explain:

Based on the responses above, evaluate the following criterion and indicate whether it is met by checking "[] YES" or "[] NO" in the left-hand column.

<input type="checkbox"/> YES / <input type="checkbox"/> NO	Is the employee paid on a salary basis that satisfies all of the criteria set out in the Salary Basis Test section above?
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Executive Job Duties

Describe the employee's job duties:

How much time does the employee spend on each job duty? (Confirm that hours or percentages reported add up to an accurate weekly total.)

What is the employee's primary job duty(ies)?

How much supervision does the employee receive with respect to each job duty? (Include frequency and extent, for example, daily, weekly, minimal supervision, or micromanaged.)

Does the employee supervise any other employees?

Yes / No

If yes, how many? (Please note in your response whether employees are full-time or part-time and whether any other employees share supervisory responsibility over those employees.)

If yes, please explain the supervisory responsibilities:

How much authority does the employee have with respect to human resources decisions, such as hiring, firing, or other employment status changes (for example, promotion and demotion)?

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking “[] YES” or “[] NO” in the left-hand column.

[] YES / [] NO	Do the employee’s primary job duties involve managing the enterprise or a customarily recognized department or subdivision of the employer?
[] YES / [] NO	Does the employee regularly supervise two or more full-time employees, or the equivalent?
[] YES / [] NO	Does the employee have authority to hire or fire or are the employee’s recommendations regarding employee status changes (for example, hiring, firing, promotion, or demotion) given particular weight?

Professional Exemption

Instructions: To determine whether an employee is exempt as a professional employee, evaluate the criteria for each of the categories in this section. Indicate whether each criterion in the charts below is met by checking “[] YES” or “[] NO” in the left-hand column.

To be exempt under the professional exemption, an employee must satisfy all criteria in the chart under Salary or Fee Basis for Professional Employees and all criteria in the chart under either:

- Learned Professional Job Duties.
- Creative Professional Job Duties.

An employee does not need to satisfy all criteria of both the learned professional and creative professional to be exempt.

Salary or Fee Basis for Professional Employees

How is the employee paid?

___ Salary.

___ Hourly.

___ Daily.

___ Per shift.

___ Fee. Please explain. _____

___ Other. Please explain. _____

What is the employee’s rate of pay?

Is the employee guaranteed any minimum weekly compensation?

___ Yes / ___ No

If yes, how much guaranteed compensation is the employee paid per week?

How frequently is the employee paid?

May the employee’s compensation be reduced for any reason?

___ Yes / ___ No

If yes, please explain:

Are any deductions taken from the employee's pay?

___ Yes / ___ No

If yes, please explain:

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking "[] YES" or "[] NO" in the left-hand column.

[] YES / [] NO	Is the employee paid on either: <ul style="list-style-type: none">• A basis that satisfies all of the criteria set out in the Salary Basis Test section above?• A fee basis under which:<ul style="list-style-type: none">• the employee is paid an agreed amount for completing a discrete job, regardless of how long it takes to complete the job; and• the fee payment meets the minimum amount required under the Salary Basis Test section above (\$455 per week) (\$913 per week effective December 1, 2016)?
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Learned Professional Job Duties

Describe the employee's job duties:

How much time does the employee spend on each job duty? (Confirm that hours or percentages reported add up to an accurate weekly total.)

What is the employee's primary job duty(ies)?

How much supervision does the employee receive with respect to each job duty? (Include frequency and extent, for example, daily, weekly, minimal supervision, or micromanaged.)

How much discretion and independent judgment does the employee exercise with respect to each job duty? (Describe the frequency, for example, daily, weekly, or regularly. Provide examples.)

What educational background is required for the position? (Do all individuals in the same position satisfy the education prerequisite? If not, how many do and do not?)

Does the position require knowledge in a particular field of science or learning?

___ Yes / ___ No

If yes, which field? _____

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking “[] YES” or “[] NO” in the left-hand column.

<input type="checkbox"/> YES / <input type="checkbox"/> NO	Is the employee’s primary duty the performance of work requiring advanced knowledge, meaning work which is predominantly intellectual and requires the consistent exercise of discretion and judgment?
<input type="checkbox"/> YES / <input type="checkbox"/> NO	Is the advanced knowledge in a field of science or learning?
<input type="checkbox"/> YES / <input type="checkbox"/> NO	Is the advanced knowledge customarily acquired by a prolonged course of specialized intellectual instruction?

Creative Professional Job Duties

Describe the employee’s job duties:

How much time does the employee spend on each job duty? (Confirm that hours or percentages reported add up to an accurate weekly total.)

What is the employee's primary job duty(ies)?

How much supervision does the employee receive with respect to each job duty? (Include frequency and extent, for example, daily, weekly, minimal supervision, or micromanaged.)

Does the position require knowledge or experience in a particular artistic or creative field (such as music or writing)?

Yes / No

If yes, which field? _____ (Do all employees in the same position satisfy the knowledge/experience prerequisite? If not, how many do and do not?)

Does the position require the employee to be inventive, imaginative, original, or to otherwise use creative talents?

Yes / No

If yes, please explain:

Based on the responses above, evaluate the following criterion and indicate whether it is met by checking “[] YES” or “[] NO” in the left-hand column.

[] YES / [] NO	Is the employee’s primary duty the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor?
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Computer Professional Exemption

Instructions: To determine whether an employee is exempt under the computer professional exemption, evaluate all of the criteria in this section. Indicate whether each criterion in the chart below is met by checking “[] YES” or “[] NO” in the left-hand column.

All criteria for the computer professional exemption (as evaluated in the charts below) must be satisfied for the employee to be exempt under the computer professional exemption.

How is the employee paid?

___ Salary.

___ Hourly.

___ Daily.

___ Per shift.

___ Other. Please explain. _____

What is the employee’s rate of pay?

Is the employee guaranteed any minimum weekly compensation?

___ Yes / ___ No

If yes, how much guaranteed compensation is the employee paid per week?

How frequently is the employee paid?

May the employee’s compensation be reduced for any reason?

___ Yes / ___ No

If yes, please explain:

Are any deductions taken from the employee's pay?

Yes / No

If yes, please explain:

Does the employee work as a computer systems analyst, computer programmer, software engineer, or other similarly skilled position in the computer field?

Yes / No

If yes, please explain.

Describe the employee's job duties:

How much time does the employee spend on each job duty? (Confirm that hours or percentages reported add up to an accurate weekly total.)

What is the employee's primary job duty(ies)?

How much supervision does the employee receive with respect to each job duty? (Include frequency and extent, for example, daily, weekly, minimal supervision, or micromanaged.)

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking "[] YES" or "[] NO" in the left-hand column.

<input type="checkbox"/> YES / <input type="checkbox"/> NO	<p>Is the employee paid on either:</p> <ul style="list-style-type: none"> • A basis that satisfies all of the criteria set out in the Salary Basis Test section above? • A fee basis under which: <ul style="list-style-type: none"> • the employee is paid an agreed amount for completing a discrete job, regardless of how long it takes to complete the job; and • the fee payment meets the minimum amount required under the Salary Basis Test section above (\$455 per week) (\$913 per week effective December 1, 2016)? • An hourly rate of at least \$27.63 per hour?
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<input type="checkbox"/> YES / <input type="checkbox"/> NO	<p>Is the employee employed as one of the following:</p> <ul style="list-style-type: none"> • A computer systems analyst? • A computer programmer? • A software engineer? • Another similarly skilled worker in the computer field?
<input type="checkbox"/> YES / <input type="checkbox"/> NO	<p>Do the employee’s primary job duties involve at least one of the following:</p> <ul style="list-style-type: none"> • Applying systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional specifications? • The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on user or system design specifications? • The design, documentation, testing, creation, or modification of computer programs related to machine operating systems? • A combination of the above duties requiring the same level of skill?

Outside Sales Exemption

Instructions: To determine whether an employee is exempt under the outside sales exemption, evaluate all of the criteria in this section. Indicate whether each criterion in the chart below is met by checking “[] YES” or “[] NO” in the left-hand column.

All criteria for the outside sales exemption (as evaluated in the charts below) must be satisfied for the employee to be exempt under the outside sales exemption.

Describe the employee’s job duties:

How much time does the employee spend on each job duty? (Confirm that hours or percentages reported add up to an accurate weekly total.)

What is the employee's primary job duty(ies)?

How much supervision does the employee receive with respect to each job duty? (Include frequency and extent, for example, daily, weekly, minimal supervision, or micromanaged.)

Where does the employee perform the job duties? If the employee performs job duties in multiple locations, please describe how much time and which job duties the employee performs at each location.

Does the employee complete sales or lay the groundwork for sales by others?

Yes / No

If yes, please explain.

How much time does the employee spend concluding sales, as opposed to marketing or promotional activities supporting his selling activities or other duties? (Confirm that hours or percentages reported add up to an accurate weekly total.)

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking “[] YES” or “[] NO” in the left-hand column.

[] YES / [] NO	Is the employee’s primary duty the making of sales or obtaining of orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer?
[] YES / [] NO	Is the employee customarily and regularly engaged away from the employer’s place of business in performing such primary duty?

Commission Sales Exemption

Instructions: To determine whether an employee is exempt under the commission sales exemption, evaluate all of the criteria in this section. Indicate whether each criterion in the chart below is met by checking “[] YES” or “[] NO” in the left-hand column.

All criteria for the commission sales exemption (as evaluated in the chart below) must be satisfied for the employee to be exempt under the commission sales exemption.

Is the employer a retail or service establishment?

___ Yes / ___ No

How is the employee paid?

What is the employee's total compensation? _____

What percentage of the employee's total compensation is based on commissions?

Describe the employee's job duties:

Identify all employment records kept for this employee:

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking "[] YES" or "[] NO" in the left-hand column.

<input type="checkbox"/> YES / <input type="checkbox"/> NO	Is the employer a retail or service establishment?
<input type="checkbox"/> YES / <input type="checkbox"/> NO	Are the employee's total earnings at least 1.5 times the federal minimum wage for each workweek worked?
<input type="checkbox"/> YES / <input type="checkbox"/> NO	Does over 50% of the employee's total compensation in a representative period (not less than a month) come from commissions?

YES / NO

Does the employer keep necessary records for the commissioned sales employee, including all of the following:

- A symbol, letter, or other notation on the payroll records identifying each employee paid as an exempt commission sales employee?
- Full name and employee identification number?
- Home address, with zip code?
- Date of birth (if under 19)?
- Sex and occupation?
- Time of day and day of week on which the employee's workweek begins?
- Hours worked each workday and total hours worked each workweek?
- Total additions to or deductions from wages paid each pay period?
- Total compensation paid to each employee each pay period, showing separately the amount of commissions and of noncommission, straight-time earnings?
- Date of payment and the pay period covered by payment?
- A copy of the agreement or understanding under which the employee is paid?

Highly Compensated Employees

Instructions: To determine whether an employee is exempt as a highly compensated employee, evaluate all of the criteria in this section. Indicate whether each criterion in the chart below is met by checking “[] YES” or “[] NO” in the left-hand column.

All criteria for the highly compensated exemption (as evaluated in the chart below) must be satisfied for the employee to be exempt as a highly compensated employee.

How is the employee paid?

____ Salary.

____ Hourly.

____ Daily.

____ Per shift.

____ Fee. Please explain. _____

____ Other. Please explain. _____

What is the employee's rate of pay?

Is the employee guaranteed any minimum weekly compensation?

Yes / No

If yes, how much guaranteed compensation is the employee paid per week?

How frequently is the employee paid?

May the employee's compensation be reduced for any reason?

Yes / No

If yes, please explain:

Are any deductions taken from the employee's pay?

Yes / No

If yes, please explain:

What is the employee's total annual compensation? _____

Describe the employee's job duties:

How much time does the employee spend on each job duty? (Confirm that hours or percentages reported add up to an accurate weekly total.)

What is the employee's primary job duty(ies)?

Based on the responses above, evaluate the following criteria and indicate whether each criterion is met by checking "[] YES" or "[] NO" in the left-hand column.

[] YES / [] NO	Does the employee earn total annual compensation of at least \$100,000 (\$134,004 annually effective December 1, 2016)?
[] YES / [] NO	Does the employee's compensation include at least \$455 per week paid on a salary basis (\$913 per week effective December 1, 2016) (see Salary Basis Test section above)?
[] YES / [] NO	Do the employee's primary duties involve office or non-manual work?
[] YES / [] NO	Does the employee customarily and regularly perform at least one of the exempt duties of the administrative, executive, or professional exemptions set out above?