


**“OH, NO!
IT’S WAGE AND HOUR!”**

**HOW DO THE
ADMINISTRATIVE,
EXECUTIVE and
PROFESSIONAL
EXEMPTION TESTS WORK?**

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From Data To Decisions: Driving
Recruitment and Retention Strategies
With Engagement Data



April Chapter Meeting

- April 18, 2024
- Virtual Meeting
- Zoom link will be provided
- 12:00 - Presentation



SCOHR
South Central Ohio
Human Resource Council
an affiliate of SHRM

Angie Redmon, SHRM-SCP, PHR
President StriveHR
Award Winning Workplace Strategist



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Recreational Marijuana Law
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Effectively Coaching HYPERSENSITIVE and OFFENSIVE
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EXEMPTIONS

Exempt v. Nonexempt Employees

1. The Minimum Salary Test,
2. The Duties Test, which includes one for bona fide executive, administrative and professional employees, and
3. The Salary Test.

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EXEMPTIONS

Minimum Salary Test

As of January 1, 2020, the weekly minimum salary requirement for exempt employees was increased to **\$684.00** a week or **\$35,568.00** per year.

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EXEMPTIONS

Minimum Salary Test

These salary requirements do not apply to outside sales employees, teachers, and employees practicing law or medicine.

8

EXEMPTIONS

Minimum Salary Test

Administrative and professional employees may also be paid on a fee basis.

9

EXEMPTIONS

Salary Test

10

EXEMPTIONS

**Standard Of Review,
Burden Of Proof
and
Rule Of Construction
For Determining
Exempt Status**

11

EXECUTIVE EXEMPTION

Primary duty (approximately 50%) must be managing the enterprise, or a customarily recognized department or subdivision of the enterprise;

Must **customarily and regularly** direct the work of at least **two other full-time employees** or their equivalent; and

Have the **authority to hire or fire** other employees, or make recommendations of particular weight as to the hiring, firing, advancement, promotion or any other change of status of other employees.

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EXECUTIVE EXEMPTION: Primary Duty

As a general rule, that the executive employee must spend at least 50 percent of his time engaged in such managerial duties.

However, the “50% Rule” only acts as a general guideline.

Therefore, even if an employee does not spend 50 percent of his time performing managerial duties, the employee may still qualify for the executive exemption if it can be shown that the “primary focus” of his position is the management of the enterprise. (Both the “50%” and the “primary focus” tests also apply to the administrative and professional exemptions.)

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EXECUTIVE EXEMPTION: Primary Management Duties

Interviewing, selecting, and training of employees, setting and adjusting their rates of pay and hours of work, directing the work of employees, maintaining production or sales records for use in supervision or control, appraising employees’ productivity and efficiency for the purpose of recommending promotions or other changes in status, handling employee complaints and grievances, disciplining employees, planning the work, determining the techniques to be used, apportioning the work among the employees, determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold, controlling the flow and distribution of materials or merchandise and supplies, providing for the safety and security of the employees or the property, planning and controlling the budget, and monitoring or implementing legal compliance measures.

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EXECUTIVE EXEMPTION: Department or Subdivision

The phrase “**a customarily recognized department or subdivision**” is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function.

15

EXECUTIVE EXEMPTION: Supervise Two or More Employees

The phrase “**two or more other employees**” means two full-time employees or their equivalent.

For example, one full-time and two half-time employees are equivalent to two full-time employees. The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent.

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**EXECUTIVE EXEMPTION:
Actual Authority to Hire or Fire and “Particular Weight”**

The Executive Exemption regulations adopted in 2004 require the employee to have the **actual authority to “hire or fire” or the authority to make recommendations that are given “particular weight.”**

This does **NOT** include occasional suggestions.

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**EXECUTIVE EXEMPTION:
Actual Authority to Hire or Fire and “Particular Weight”**

The regulations also eliminated the special rule for “**sole charge**” executives. Instead, they require a 20% owner/employee to be “**actively engaged**” in the management of the enterprise.

18

ADMINISTRATIVE EXEMPTION

Primary duty (approximately 50%) must be office or non-manual work directly related to the management or general business operations;

and

Primary duty includes the exercise of **discretion and independent judgment in significant matters.**

19

ADMINISTRATIVE EXEMPTION

Primary duty (approximately 50%) must be office or non-manual work directly related to the management or general business operations;

20

ADMINISTRATIVE EXEMPTION:

“Directly Related To Management or General Business Operations”

Work **“directly related to management or general business operations”** includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet and database administration; legal and regulatory compliance; and similar activities.

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ADMINISTRATIVE EXEMPTION:

“Employer’s Customers”

An employee may qualify for the administrative exemption if the employee’s primary duty is the performance of work directly related to the management or general business operations of the employer’s customers. Thus, employees acting as advisors or consultants to their employer’s clients or customers — as tax experts or financial consultants, for example — may be exempt.

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ADMINISTRATIVE EXEMPTION:

“Discretion & Independent Judgment”

Factors to consider include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval, and other factors set forth in the regulation. The fact that an employee’s decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment.

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ADMINISTRATIVE EXEMPTION:

“Discretion and Independent Judgment”

In the 2004 regulations, the Department of Labor said that the use of manuals, guidelines or other established procedures containing or relating to highly technical, scientific, legal, financial or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills would not preclude someone from being exempt under the FLSA.

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ADMINISTRATIVE EXEMPTION:**“Discretion and Independent Judgment”**

Functions that require the exercise of discretion and independent judgment includes **advising management, planning, negotiation, representing the company, purchasing, promoting sales, and business research and control.**

On the other hand, the regulations also specifically state that the typical duties of a secretary, such as **typing, filing and answering correspondence at the direction of her supervisor, do not qualify under this test.** However, **answering correspondence on her own authority, interviewing applicants and arranging meetings under her own discretion do qualify** under the administrative exemption test.

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ADMINISTRATIVE EXEMPTION:**“Significant Matters”**

The term **“significant matters”** refers to the level of importance or consequence of the work performed.

Therefore, administrative duties that are **clerical or routine in nature do not qualify under this test.**

26

ADMINISTRATIVE EXEMPTION

Primary duty (approximately 50%) must be office or non-manual work directly related to the management or general business operations;

and

Primary duty includes the exercise of discretion and independent judgment in significant matters.

27

LEARNED PROFESSIONAL

The employee's primary duty (approximately 50%) must be work requiring **“advanced knowledge,”** which means it's predominantly **intellectual in character** and requires the **consistent exercise of discretion and judgment**”;

The advanced knowledge must be in a field of **science or learning**;

and

The advanced knowledge must be customarily acquired by a **prolonged course of specialized intellectual instruction** or a combination of experience and instruction which enables the person to perform the same work as degreed professionals.

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LEARNED PROFESSIONAL

The employee's primary duty (approximately 50%) must be work requiring **“advanced knowledge,”** which means it's predominantly **intellectual in character** and requires the **consistent exercise of discretion and judgment**”;

The final regulations also clarify that **veteran or long-term status alone is insufficient** to satisfy the Professional Exemption.

A professional employee generally uses the **advanced knowledge** to analyze, interpret or make deductions from varying facts or circumstances.

Advanced knowledge cannot be attained at the high school level.

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LEARNED PROFESSIONAL

The advanced knowledge must be in a field of **science or learning**;

Fields of science or learning include **law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other occupations** that have a recognized professional status and are **distinguishable** from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type, but is **not** in a field of science or learning.

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LEARNED PROFESSIONAL

The learned professional exemption is restricted to professions where specialized academic training is a **standard prerequisite for entrance into the profession.**

The best evidence of meeting this requirement is having the **appropriate academic degree.**

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LEARNED PROFESSIONAL

However, the word “**customarily**” means this exemption **may** be available to employees in such professions that have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a **combination** of work experience and intellectual instruction.

32

LEARNED PROFESSIONAL

The employee's primary duty (approximately 50%) must be work requiring “**advanced knowledge,**” which means it's predominantly **intellectual in character** and requires the **consistent exercise of discretion and judgment**”;

The advanced knowledge must be in a field of **science or learning**;
and

The advanced knowledge must be customarily acquired by a **prolonged course of specialized intellectual instruction** or a combination of experience and instruction which enables the person to perform the same work as degreed professionals.

33

CREATIVE PROFESSIONAL

Primary duty primary duty must be the performance of work requiring **invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.**

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CREATIVE PROFESSIONAL

“Invention, imagination, originality or talent”

The requirements are generally met by **actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, novelists, and others as set forth in the regulations.**

Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring **invention, imagination, originality or talent.**

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CREATIVE PROFESSIONAL

“Recognized field of artistic or creative endeavor.

This includes such fields as, for example, **music, writing, acting and the graphic arts.**


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EXEMPTION TESTS WORK?**

**Start Date: 4/5/2024
End Date: 12/31/2024**

1 Recertification Credit Hours: General

**HRCI Program ID: 665668
SHRM Activity 24-C6JGV**



The logo for SHRM Recertification Provider features a purple circular emblem with a white lowercase 'h' in the center. The text 'HUMAN RESOURCE CERTIFICATION INSTITUTE' is written around the top inner edge, 'APPROVED' at the bottom left, and 'PROVIDER' at the bottom right. Below the emblem, the text 'SHRM' is centered, followed by 'SHRM-CP | SHRM-SCP' in a blue box, and 'RECERTIFICATION PROVIDER' in large, bold, blue letters.

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For more information and further assistance, please contact ...
Scott Warrick's Human Resource Consulting & Employment Law Services
(www.scottwarrick.com)
&
Scott Warrick's Employment Law Services.
scott@scottwarrick.com

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