



**LEGAL BASICS:
WHITE COLLAR
EXEMPTIONS**

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THE BASIC RULES OF WAGE AND HOUR LAW

- Employees are entitled to be paid their hourly wage (at least minimum wage) for all hours worked in a work week
- Employees are entitled to be paid 1.5 times their hourly wage for all hours worked over 40 in a work week (overtime)



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WHAT DOES EXEMPT MEAN?

EXEMPT MEANS EXEMPT
FROM OVERTIME



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CAN YOU MAKE EVERYONE NON-EXEMPT?

- YES. You can make everyone non-exempt and pay them hourly with overtime even if they qualify for an exemption.
- *BUT if you want to get away from that, you have to follow the rules . . .*



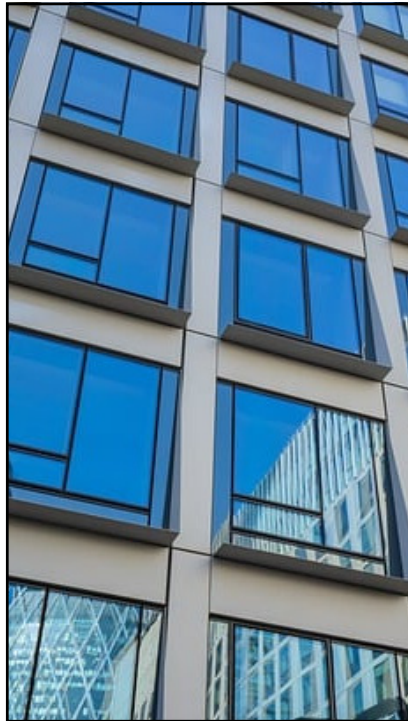
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BASIC RULES FOR EXEMPT EMPLOYEES

- Must be paid a minimum salary every work week that does not vary based on hours worked or output produced
- Must meet one of the duties tests



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MINIMUM SALARY RULES

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HOW MUCH?

- In New York, changes with the minimum wage changes AND exemption.
 - Upstate currently at least \$1,199.10 per week (annualized \$62,353.20)
- Federal minimum exempt salary \$684 per week (\$35,568 annually)
- *Note: There is no part-time exempt unless they make the minimum salary*

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HOW OFTEN?

- **Governed by frequency of pay rules. Typically at least bi-weekly or semi-monthly. Can be weekly**



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EXCEPTIONS?

- **Partially worked week at the beginning or end of a job**
- **No work performed in a work week (includes FMLA)**
- **Certain disciplinary suspensions**
- **Full day absence due to illness or disability *IF* employer has a time off plan**
Note: at least some courts have held that if employee exhausted their time off and they are sick, no deduction can be made

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EXCEPTIONS

- **Jury Duty, Witness Duty, Military Leave**
- **Full day off for other than sickness**
- **Intermittent FMLA allows for partial day deductions— otherwise, full day deductions for time off**

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QUIZ TIME: LAWFUL DEDUCTION OR NOT?

- Employee leaves 2 hours early to attend child's Parent Teacher conference?
- Employer was closed due to inclement weather
- Employee leaves at noon to go camping
- Employee doesn't work Tuesday due to car appointment and delivery of an oven
- Employee takes intermittent paid family leave to care for an elderly parent.



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DUTIES TESTS

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ADMINISTRATIVE EXEMPTION

<https://dol.ny.gov/system/files/documents/2021/12/administrative-employee-overtime-exemption-frequently-asked-questions.pdf>

- The Employee's primary duty consists of the performance of office or non-manual field work directly related to management policies or general operations
- The Employee customarily and regularly exercises discretion and independent judgment
- The Employee regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity or who performs under general supervision, work along specialized or technical lines requiring special training, experience or knowledge

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WHAT IS PRIMARY DUTY?

- Principal, main, major, or most important duty
- For some hospitality industry jobs, it must be *at least 80%* of the time



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WHAT DOES EXERCISE DISCRETION OR JUDGMENT MEAN?

- Independent use of judgment to evaluate choices and make a decision
- Ability to bind the business with their own authority
- Cannot simply follow well established procedures or techniques



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QUESTIONS DOL ASKS

- Does the employee formulate, affect, interpret, or implement policies or practices?
- Does the employee carry out major assignments in conducting the business?
- Does the employee's work affect business operations to a substantial degree?
- Can the employee commit the employer in matters that have significant financial impact?
- Does the employee have authority to waive or deviate from established policies and procedures without prior approval?



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WHAT DOES "DIRECTLY RELATED TO MANAGEMENT OR GENERAL BUSINESS OPERATIONS" MEAN


- Employee must perform work directly related to assisting with the running or servicing of the business
- Cannot be performing the business of the business



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TYPES OF WORK THAT CAN QUALIFY


- Taxes, 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, legal, regulatory compliance



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MISTAKES PEOPLE MAKE

- Thinking Administrative means Administrative Assistant
- Thinking because someone does a job that *could* be administrative, they definitely are
- Ignoring discretion, judgment and ability to bind the company

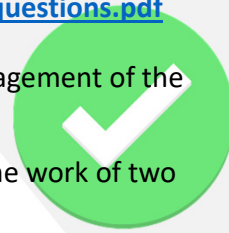


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EXECUTIVE EXEMPTION

<https://dol.ny.gov/system/files/documents/2021/03/executive-employee-overtime-exemption-frequently-asked-questions.pdf>

- The Employee's primary duty consists of the management of the enterprise
- The Employee customarily and regularly directs the work of two or more other employees
- The Employee has the authority to hire or fire other employees OR the Employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees have particular weight
- The Employee customarily and regularly exercises discretionary powers



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WHAT DOES MANAGEMENT OF THE ENTERPRISE MEAN?

- This is a role that manages employees (2 or more FTE)
- Factors considered:
 - Interviewing, selecting, and/or training employees
 - Setting and adjusting pay and schedules
 - 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



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PROFESSIONAL EXEMPTION

<https://dol.ny.gov/system/files/documents/2021/03/professional-employee-overtime-exemption-frequently-asked-questions.pdf>

- Primary Duty:
 - Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from A general academic education; OR
 - Is original and creative in a recognized field of artistic endeavor, and produces a result that depends primarily on the invention, imagination, or talent of the employee
- Requires the consistent exercise of discretion and judgment in its performance
- Is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work)
- Is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time

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WHAT IS FIELD OF SCIENCE OR LEARNING

- Law
- Medicine
- Theology
- Accounting
- Pharmacy
- Various types of physical, chemical, and biological sciences
- 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.
- Actuarial computation
- Engineering
- Architecture
- Teaching



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WHAT IS PROLONGED COURSE OF INSTRUCTION

- The job typically requires at least a college degree in the particular field
- Can include other employees who do not have the degree IF they have similar knowledge levels and perform same work



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WHAT IS RECOGNIZED FIELD OF ARTISTIC ENDEVOUR

- Results cannot be produced by a person endowed with general manual or intellectual ability and training, but which depend primarily on the invention, imagination, or talent of the employee.
- They can't typically be replicated by someone else (except poorly)
- Singers, actual artists, costume designers (but not sewers)



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ONLY ONE OF THESE IS EXEMPT



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OTHER EXEMPTIONS



COMPUTER
PROFESSIONAL



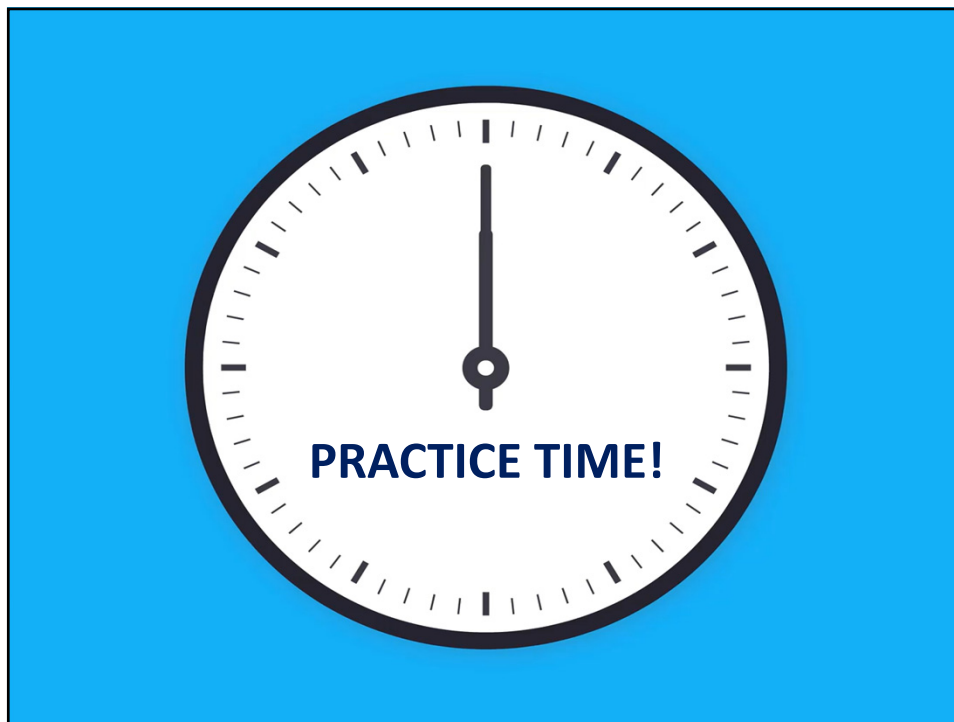
OUTSIDE SALES (INSIDE
SALES NEVER EXEMPT)



HIGHLY COMPENSATED
EMPLOYEE

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EXEMPT OR NOT EXEMPT

- Sue has an accounting degree. She works as the accounts receivable clerk processing payments to the employer and making deposits based on the guidelines from the CFO.
- If you know nothing else, could Sue be Exempt? If so, under what exemption?

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EXEMPT OR NOT?

- Mark is the director of maintenance. He supervises one other employee. He hires a heating tech to service the heat system and the lawn service to mow and approves their invoices. He manages the maintenance budget.



Is Mark likely exempt? If so, under what exemption?

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EXEMPT OR NOT

- Sue has an accounting degree. She works as a loan officer in the bank. Is she exempt?
- Bradley is a marketing executive at a software brand. He helps develop their brand strategy and advertising promotions. Is he exempt?
- What if Bradley works for a marketing firm doing the same work?



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EXEMPT OR NOT

- Sue has a Master of Social Work and works as a case worker. She meets with clients, determines their needs and what they qualify for, and refers them to resources. She reports to her boss on a monthly basis on her case load and any problem cases. She has to get approval for expenditures such as mileage to visit client's living situations. Is Sue likely exempt? If so why?
- Sue's coworker Sally does the same job but has only a bachelor's of sociology. She's been doing the same job for about 8 years. Is Sally exempt?

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EXEMPT OR NOT

- Sue has a social work degree. She works for an assisted living facility. She helps residents fill out required paperwork. She fills out required care plans. She chooses a level of care for patients based on a list with descriptions of the care levels.

Is Sue exempt?



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EXEMPT OR NOT?

Megan is the assistant manager at a retail store. She mostly works the register or helps customers, but she fills in for the manager on the night shift once a week. Sometimes she participates in interviews. If there is a problem with an employee, she writes the issue up for the manager to review.

Is Megan exempt?

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EXEMPT OR NOT

- Gerald works the IT internal help desk of a large business.
- He's paid \$90,000 per year.
- Is Gerald exempt?

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EXEMPT OR NOT

- Mary is an LPN working in a long term care facility. She runs the medicine cart on her shift and helps patients with their needs. Occasionally she directs a Certified Nurses Aid to complete some task on the shift.

Is Mary exempt?



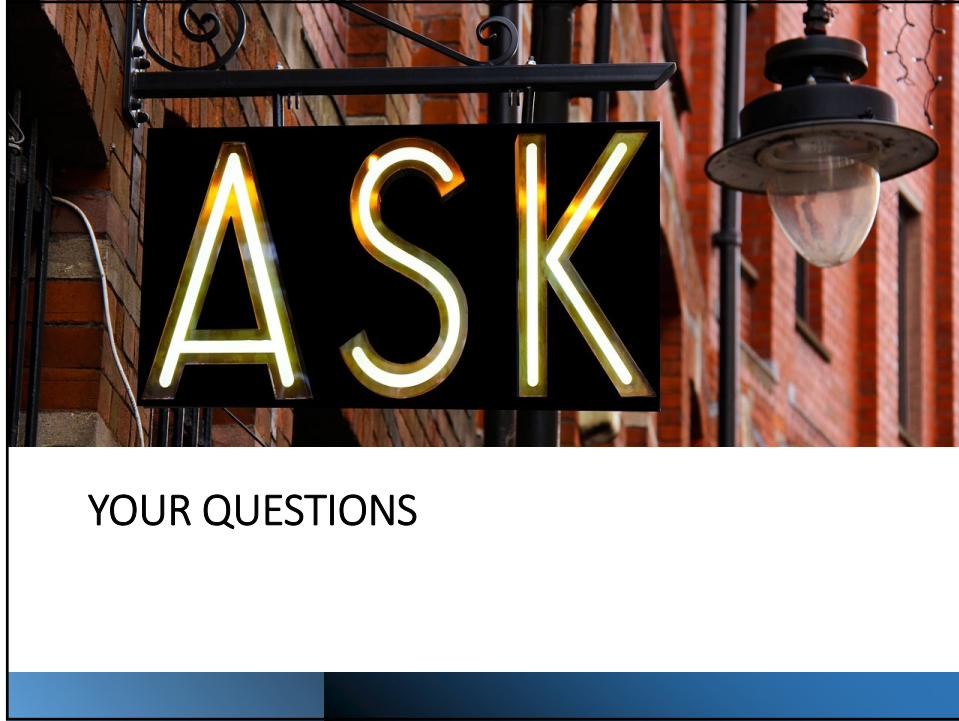
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WHAT TO DO NOW?

- Audit your Exempt Positions
- Beware of Mission Creep
- Get Help if You Need to Misclassify



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