

Fair Labor Standards Act Guide

Executive Employee Exemption

Oregon Rules	New Federal Regulations
<ul style="list-style-type: none"> ❖ Compensated on a “salary basis” at a rate of not less than [minimum wage x 40 hours] per week exclusive of board, lodging or other facilities, AND ❖ Primary duty is management of the enterprise or of a customarily recognized department or subdivision, AND ❖ Customarily and regularly directs the work of two or more other employees, AND ❖ Has authority to hire or fire, or whose suggestions and recommendations as to hiring, firing, advancement, promotion or other status changes are given particular weight, AND ❖ Does not devote more than 20 percent, or in the case of an employee of a retail or service establishment, does not devote more than 40 percent of the hours worked in the workweek, to activities which are not directly and closely related to the performance of the work described above. ❖ OAR 839-020-0320(1) ❖ Note: Under Oregon’s “short test” applicable to public employees, employees will be deemed to meet all the requirements above if they are paid \$250 per week, their primary duty is management of the enterprise or of a customarily recognized department or subdivision, and if they customarily and regularly direct the work of two or more other employees. <p>Note: Oregon also has a supervisory employee exemption that is identical to the executive employee exemption. OAR 839-020-0320(3).</p>	<ul style="list-style-type: none"> ❖ Compensated on a “salary basis” at a rate of not less than \$455 per week exclusive of board, lodging or other facilities, AND ❖ Primary duty is managing the enterprise or of a customarily recognized department or subdivision, AND ❖ Customarily and regularly directs the work of two or more other employees, AND ❖ Has authority to hire or fire, or whose suggestions and recommendations as to hiring, firing, advancement, promotion or other status changes are given particular weight. <ul style="list-style-type: none"> ❖ 29 CFR 541.100 ❖ Note: There is no longer a “short test” in the FLSA regulation

Administrative Employee Exemption

Oregon Rules	New Federal Regulations
<ul style="list-style-type: none"> ❖ Compensated on a “salary basis” at a rate of not less than [minimum wage x 40 hours] per week exclusive of board, lodging or other facilities, AND ❖ Primary duty is office or non-manual work directly related to the management policies or general business operations of the employer or the employer’s customers, AND ❖ Customarily and regularly exercises discretion and independent judgment, AND ❖ Regularly and directly assists an employee employed in an executive or administrative capacity; or performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge; or executes under only general supervision special assignments and tasks, AND ❖ Does not devote more than 20 percent, or in the case of an employee of a retail or service establishment, does not devote more than 40 percent of the hours worked in the workweek, to activities which are not directly and closely related to the performance of the work described above. ❖ OAR 839-020-0320(2) ❖ Note: Under Oregon’s “short test” applicable to public employees, employees will be deemed to meet all the requirements above if they are paid \$250 per week and their primary duty is office or non-manual work directly related to the management policies or general business operations of the employer or the employer’s customers, which work requires the exercise of discretion and independent judgment. 	<ul style="list-style-type: none"> ❖ Compensated on a “salary basis” at a rate of at least \$455 per week exclusive of board, lodging or other facilities AND ❖ Primary duty is office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers AND ❖ The primary duty includes exercise of discretion and independent judgment with respect to matters of significance ❖ 29 CFR 541.200 ❖ Note: There is no longer a “short test” in the FLSA regulation

**Administrative Employee Exemption
(Educational establishments)**

Oregon Rules	New Federal Regulations
<ul style="list-style-type: none"> ❖ Compensated on a “salary basis” at a rate of not less than [minimum wage x 40 hours] per week exclusive of board, lodging or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed AND ❖ Primary duty is performance of functions in the administration of a school system, or educational establishment or institution, or a department or subdivision, in work directly related to academic instruction or training carried on therein, AND ❖ Customarily and regularly exercises discretion and independent judgment, AND ❖ Regularly and directly assists an employee employed in an executive or administrative capacity; or performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge; or executes under only general supervision special assignments and tasks, AND ❖ Does not devote more than 20 percent of the hours worked in the workweek, to activities which are not directly and closely related to the performance of the work described above. ❖ OAR 839-020-0320(2) ❖ Note: Under Oregon’s “short test” for public employees, employees will be deemed to meet all the requirements above if they are paid \$250 per week and their primary duty is as stated above and requires the exercise of discretion and independent judgment. 	<ul style="list-style-type: none"> ❖ Compensated on a “salary basis” at a rate of at least \$455 per week exclusive of board, lodging or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed AND ❖ Primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision ❖ 29 CFR 541.204 ❖ Note: There is no longer a “short test” in the FLSA regulation

Professional Employee Exemption

Oregon Rules	New Federal Regulations
<ul style="list-style-type: none"> ❖ Compensated on a “salary basis” at a rate of at least [minimum wage x 40 hours] per week exclusive of board, lodging or other facilities (teachers, doctors and lawyers are not subject to this requirement) AND ❖ Primary duty is: <ul style="list-style-type: none"> ○ Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (the learned professional exemption); <i>or</i> ○ Work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on the invention, imagination or talent of the employee (the creative professional exemption); <i>or</i>. ○ Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge by a person employed and engaged in this activity as a teacher in the educational establishment by which he is employed; AND ❖ The work requires the consistent exercise of discretion and judgment in its performance; AND ❖ The work is predominantly intellectual and varied in character and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; AND 	<ul style="list-style-type: none"> ❖ Compensated on a “salary basis” at a rate of at least \$455 per week exclusive of board, lodging or other facilities (teachers, doctors and lawyers are not subject to this requirement) AND ❖ Primary duty is: <ul style="list-style-type: none"> ○ Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction (the learned professional exemption); <i>or</i> ○ Work requiring invention, imagination, originality in a recognized field of artistic or creative endeavor (the creative professional exemption). ❖ Professional employee also means employee with primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge by a person employed and engaged in this activity as a teacher in the educational establishment by which he is employed ❖ Professional employee also means employee who is a holder of a valid license or certificate permitting the practice of law or medicine who is actually engaged in that practice, as well as medical interns or residents holding the requisite degree

<ul style="list-style-type: none"> ❖ No more than 20 percent of the hours worked in the workweek are devoted to activities which are not an essential part of and necessarily incident to the work described above. ❖ OAR 839-020-0320(4) ❖ Note: Under Oregon’s “short test” for public employees, employees will be deemed to meet all the requirements above if they are paid \$250 per week and their work consists of the primary duties described above, which work requires the consistent exercise of discretion and judgment 	<ul style="list-style-type: none"> ❖ 29 CFR 541.300; 29 CFR 541.303; 29 CFR 541.304; 20 CFR 541.600 ❖ Note: There is no longer a “short test” in the FLSA regulation
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Computer Employee Exemption

Oregon Rules	New Federal Regulations
<ul style="list-style-type: none"> ❖ Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption <i>as professional employees</i> if they meet the following requirements: ❖ Compensated on a “salary basis” at a rate of at least [minimum wage x 40 hours] per week, exclusive of board, lodging or other facilities, or on an hourly basis at a rate of not less than \$27.63 per hour AND ❖ Primary duty consists of: <ul style="list-style-type: none"> ○ the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or ○ the 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 ○ the design, documentation, testing, creation or modification of computer programs related to machine operating systems; or ○ a combination of these duties, the performance of which requires the same level of skills; AND ❖ The work requires the consistent exercise of discretion and judgment in its performance; AND 	<ul style="list-style-type: none"> ❖ Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for a <i>separate exemption</i> if they meet the following requirements: ❖ Compensated on a “salary basis” at a rate of at least \$455 per week, exclusive of board, lodging or other facilities, or on an hourly basis at a rate of not less than \$27.63 per hour AND ❖ Primary duty consists of: <ul style="list-style-type: none"> ○ the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or ○ the 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 ○ the design, documentation, testing, creation or modification of computer programs related to machine operating systems; or ○ a combination of these duties, the performance of which requires the same level of skills.

<ul style="list-style-type: none"> ❖ The work is predominantly intellectual and varied in character and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; AND ❖ No more than 20 percent of the hours worked in the workweek are devoted to activities which are not an essential part of and necessarily incident to the work described above. ❖ OAR 839-020-0320(4); OAR 839-020-0350 ❖ Note: Under Oregon’s “short test” for public employees, employees will be deemed to meet all the requirements above if they are paid not less than \$250 per week or \$27.63 per hour, and their work consists of the primary duties described above, which work requires the consistent exercise of discretion and judgment. 	<ul style="list-style-type: none"> ❖ FLSA § 213(a)(17); 29 CFR 541.400 ❖ Note: This is a separate statutory exemption under the federal law. Computer employees may also be exempt as a professional, executive, or administrative employee if they meet the requirements for those exemptions.
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Highly-Compensated Employee Exemption

Oregon Rules	New Federal Regulations
<ul style="list-style-type: none"> ❖ There is no comparable exemption under Oregon law 	<ul style="list-style-type: none"> ❖ Total annual compensation is at least \$100,000 including salary, commissions, non-discretionary bonuses, etc.; but not including payments for insurance or retirement plans ❖ Customarily and regularly performs any one or more exempt duties or responsibilities of an executive, administrative or professional employee. ❖ Primary duty must include performing office or non-manual work ❖ 29 CFR 541.601

Salary Basis

Oregon Rules	New Federal Regulations
<ul style="list-style-type: none"> ❖ Employee must regularly receive each pay period a predetermined amount constituting all or part of his or her compensation, which is not subject to reduction because of lack of work for part of a workweek. ❖ Employee need not be paid for any workweek in which he or she performs no work ❖ Deductions from salary may be made only: <ul style="list-style-type: none"> ○ For absences of one or more full days for personal reasons other than sickness or disability; ○ For absences of one or more full days occasioned by sickness, disability, or accident if the employer maintains a bona fide plan, policy, or practice of providing compensation for the loss of salary caused by such sickness or disability. ○ In connection with providing unpaid leave under the FMLA. ○ No rule, but BOLI website says offsets for jury fees, witness fees or military pay are allowed ○ No rule, but BOLI website says no reduction as disciplinary measures are allowed <u>unless</u> penalty is imposed for violation of a safety rule of major significance. ○ No rule, but BOLI website says disciplinary suspensions must be in full-week increments. 	<ul style="list-style-type: none"> ❖ Employee must regularly receive each pay period a predetermined amount constituting all or part of his or her compensation, which is not subject to reduction because of variations in the quality or quantity of work ❖ Employee need not be paid for any workweek in which he or she performs no work ❖ Deductions from salary may be made only: <ul style="list-style-type: none"> ○ For absences of one or more full days for personal reasons other than sickness or disability; ○ For absences of one or more full days occasioned by sickness, disability, or accident if the employer maintains a bona fide plan, policy, or practice of providing compensation for the loss of salary caused by such sickness or disability. ○ In connection with providing unpaid leave under the FMLA. ○ To offset amounts an employee receives as jury fees, witness fees, or military pay. ○ To impose a penalty in good faith for violating safety rules of major significance. ○ For unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace rules, if imposed pursuant to a written policy applicable to all employees.

<ul style="list-style-type: none"> ○ No rule, but BOLI materials conclude that proportionate payment for initial or terminal week of employment is not inconsistent with salary basis. ❖ Special rules for public employers: <ul style="list-style-type: none"> ○ Deductions for absences of less than one-work day shall not disqualify the employee where the employee is paid according to a pay system established by statute, ordinance, regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by the employee because permission for its use has not been sought or has been sought and denied, or accrued leave has been exhausted, or the employee chooses to use leave without pay ○ Deductions for absences due to a budget-required furlough shall not disqualify the employee except in the week the furlough occurs and for which the employee's pay is accordingly reduced ❖ Effect of improper deductions: An employer who makes improper deductions may lose the exemption. ❖ Oregon rules have no safe harbors. 	<ul style="list-style-type: none"> ○ To pay for the proportionate part of an employee's salary for time actually worked during the initial or terminal week of employment. ❖ Special rules for public employers: <ul style="list-style-type: none"> ○ Deductions for absences of less than one-work day shall not disqualify the employee where the employee is paid according to a pay system established by statute, ordinance, regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by the employee because permission for its use has not been sought or has been sought and denied, or accrued leave has been exhausted, or the employee chooses to use leave without pay ○ Deductions for absences due to a budget-required furlough shall not disqualify the employee except in the week the furlough occurs and for which the employee's pay is accordingly reduced ❖ Effect of improper deductions: An employer who makes improper deductions shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis. ❖ Safe harbors for improper deductions: <ul style="list-style-type: none"> ○ Isolated or inadvertent improper deductions do not destroy "salary basis" if employer reimburses employees
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<p>❖ OAR 839-020-0004(30); OAR 839-020-0330</p>	<ul style="list-style-type: none"> ○ Other improper deductions do not destroy “salary basis” if: a) there is a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism; b) employees are reimbursed; and c) employer makes a good-faith commitment to comply with the salary-basis rules in the future ❖ Improper deductions that do not fall within safe harbors destroy “salary basis” only for the time period in which the deductions were made, and only for employees in the same job classification working for the same managers responsible for the actual improper deductions. Other employees remain unaffected. ❖ 29 CFR 541.602; 29 CFR 541.603; 29 CFR 541.710
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