

Administrative Employee Overtime Exemption Frequently Asked Questions (FAQ)

Both federal law (Fair Labor Standards Act or FLSA) and state law (New York Minimum Wage Act and applicable regulations) generally require the payment of overtime wages for work performed after 40 hours per week. The FLSA and the State Minimum Wage Act exempt employees who work in a bona fide administrative capacity from the overtime pay requirements.

If the criteria of the New York State exception match those in the FLSA, this Department usually applies the criteria consistently with the FLSA, its regulations, and interpretations issued by the U.S. Department of Labor.

The employee must meet all of these tests to qualify for the Administrative employee exemption:

- 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
- The Employee is paid for their services on a salary basis, inclusive of board, lodging, other allowances and facilities, of not less than:
 - (1) New York City by
 - (i) Large employers of eleven or more employees \$825.00 per week (\$975.00 per week on and after December 31, 2017; \$1,125.00 per week on and after December 31, 2018);
 - (ii) Small employers of ten or fewer employees \$787.50 per week (\$900.00 per week on and after December 31, 2017; \$1,012.50 per week on and after December 31, 2018; \$1,125.00 per week on and after December 31, 2019);
 - (2) Remainder of downstate (Nassau, Suffolk and Westchester counties) \$750.00 per week (\$825.00 per week on and after December 31, 2017; \$900.00 per week on and after December 31, 2018; \$975.00 per week on and after December 31, 2019; \$1,050.00 per week on and after December 31, 2020; \$1,125.00 per week on and after December 31, 2021);
 - (3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties) \$727.50 per week (\$780.00 per week on and after December 31, 2017; \$832.00 per week on and after December 31, 2018; \$885.00 per week on and after December 31, 2019; \$937.50 per week on and after December 31, 2020.

What does “salary” mean?

Being paid on a “salary basis” means an employee regularly receives a predetermined amount of compensation each pay period. This can be on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee’s work. An exempt employee must receive the full salary for any week in which they perform any work, regardless of the number of days or hours worked.

What does “primary duty” mean?

"Primary duty" has been interpreted to mean the principal, main, major, or most important duty that the employee performs. A determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

What does “exercise of discretion and judgment” mean?

In general, the exercise of discretion and independent judgment involves the comparison and evaluation of possible courses of conduct and acting or making a decision after consideration of the various possibilities. In general, such an employee must have the authority to make an independent choice, free from immediate direction or supervision.

Factors to consider include (but are not limited to):

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?

If an employee’s decisions are revised or reversed after review, it does not mean that the employee is not exercising discretion and independent judgment. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.

What does “directly related to management or general business operations mean?”

To meet the “directly related to management or general business operations” requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment. Examples of such work include activities that relate to:

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

computer

network, Internet

and database

administration

legal and

regulatory

compliance

It is important to note, however, that the mere performance of such activities does not, by itself, bring an employee within the administrative exception.