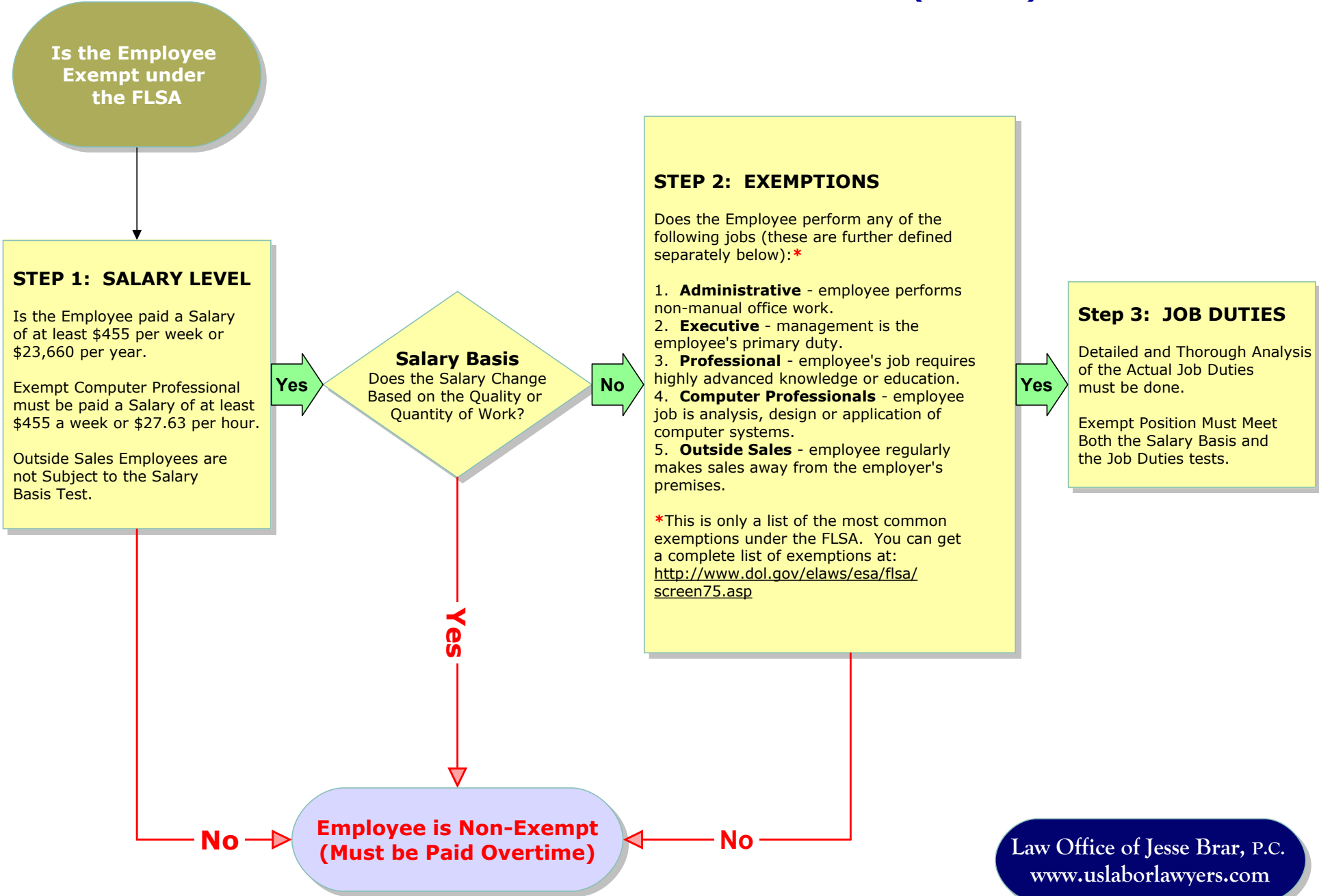


# EXEMPTIONS (FROM MINIMUM WAGE & OVERTIME PAYMENTS) UNDER THE FAIR LABOR STANDARDS ACT ("FLSA")



# Exemptions (From Overtime) Under The Fair Labor Standards Act ("Flsa")

This is a basic outline for an initial analysis of whether a position is exempt under the FLSA. Employees whose jobs are governed by the FLSA are either *exempt* or *nonexempt*. Nonexempt employees must be paid overtime for all hours worked over 40 hours in a workweek. Exempt employees are not entitled to overtime. Generally, whether an employee is exempt or nonexempt depends on three factors: (1) how he or she is paid (i.e., whether he or she is paid on hourly or salary basis); (2) how much he or she is paid; and (3) what kind of work he or she actually performs.

## Step 1: Is the Salary Basis Test Satisfied?

With few exceptions, to be Exempt an employee must be: (1) paid at least \$23,600 per year (\$455 per week); and (2) paid on a salary basis.

Employees who are paid less than \$23,600 per year (\$455 per week) are nonexempt. But, computer professionals must be paid a salary of \$455 per week or \$27.63 per hour. And, highly paid employees (earning more than \$100,000 per year) are almost certainly exempt. Finally, outside sales people are subject to the salary basis test.

Generally, an employee is considered to be paid on a salary basis if he or she has a guaranteed minimum amount that he or she receives for any workweek in which he or she performs any work. This amount need not be the entire compensation received, but there must be some amount of pay the employee can count on receiving in any workweek in which he or she does any work.

The salary basis test applies to reductions in the amount paid to an employee. There can be permissible and impermissible reductions in salary basis pay. Permissible reductions do not change the employee's exempt status. However, an employee subjected to impermissible reductions may no longer be considered paid on a salary basis, and is therefore could be become nonexempt. With some exceptions, the base pay of a salary-basis employee may not be reduced based on the quality or quantity of work performed during any workweek. That is, the salary of an employee may not be reduced if he or she performs less work than normal. For example, an employee's salary may not be reduced if there is less work available, and the salary may not be reduced for partial day absences. However, employers may make deductions from the salary in full-day increments, for disciplinary suspensions, or for personal leave, or for sickness under a bona fide sick leave plan.

The salary basis test for exempt status does not apply to certain jobs (e.g., doctors, lawyers and school teachers are exempt even if the employees are paid hourly).

## Step 2: Do Any Exemptions Apply?

An employee who meets the salary basis test must also meet the duties test in order to be exempt. There are three typical categories of exempt job duties, called "executive," "professional," and "administrative."

**Executive**— Employee is an exempt *executive* if the employee regularly supervises two or more other employees, has management as his or her primary duty, and also has some genuine input into the job status of other employees (such as hiring, firing, promotions, or assignments).

The supervision of other employees must be a regular part of the employee's job. Supervision of non-employees does not count. In addition to the supervision, the employee must also have management as the primary duty of his or her job. The Department of Labor regulations contain a list of typical management duties, including: Interviewing, selecting, and training employees; setting rates of pay and hours of work; appraising productivity; handling employee grievances or complaints, or disciplining employees; apportioning work among employees; and monitoring work for legal or regulatory compliance; etc.

Whether an employee has management as the primary duty of the position requires case-by-case analysis. Generally, if the employee is "in charge" of a department, subdivision, or shift, he or she is likely an exempt executive. Finally, the executive employee must have genuine input into personnel matters.

**Professional**— The professionals in traditional "learned professions", such as, lawyers, doctors, dentists, teachers, architects, clergy, are exempt under the FLSA. Employee who primarily performs work requiring advanced knowledge/education and which includes consistent exercise of discretion and independent judgment. The advanced knowledge must be in a field of science or learning acquired in a prolonged course of specialized intellectual instruction. Professional exemption includes creative professionals who perform work requiring invention, imagination, originality and/or talent in a field of artistic endeavor.

**Administrative**— This is the most elusive and imprecise of the definitions of exempt job duties. The regulations define the exempt administrative job duties as: *office or non-manual work, which is directly related to management or general business operations of the employer or the employer's customers, and a primary component of which involves the exercise of independent judgment and discretion about matters of significance.*

The administrative exemption is understandable in the context of distinguishing administrative employees from "operational" or "production" employees. Employees who make what the business sells are not administrative employees. Administrative employees provide "support" to the operational or production employees. They are "staff" rather than "line" employees. To be exempt under the administrative exemption, the "support" work must be office or non-manual, and must be for matters of significance. Administratively exempt work typically involves the exercise of discretion and judgment, with the authority to make independent decisions on matters which affect the business as a whole or a significant part of it.

Purely clerical work may be administrative, but it is not exempt. For example, most secretaries may be performing administrative work and may in fact exercise some discretion and judgment in their jobs, but for the exemption to apply, the exercise of judgment and discretion must be about matters of considerable importance to the operation of the business as a whole.

**Computer Professional**—Employee who primarily performs work as a computer systems analyst, software engineer or similarly skilled work in the computer field performing: (1) application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional specifications; or (2) design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specification; or (3) design, documentation, testing, creation or modification of computer programs based on and related to user or system design specifications; or a combination of these duties the performance of which requires the same level of skills, is usually exempt as a computer professional.

**Outside Sales**—Employee who performs sales work off the company's premises and whose primary duties include making sales or obtaining order or contracts for services or for the use of facilities for which the client or customer pays. This employee is customarily and regularly away from the company's place of business while performing such duties.

### **Step 3: Do the Actual Job Duties Fit with an Exemption?**

Whether a particular position qualifies as exempt depends on what the actual job duties are for that position. Job titles are of limited use in determining whether the job duties are exempt. For example, a secretary in an office is still a secretary even if her title is "administrative assistant" or "office manager." On the other hand, an office manager is an office manager even if he is called a janitor. It is the actual job duties, along with how those particular job tasks fit into the employer's overall operations, which must be evaluated.

**An exempt position must pass both the salary basis and duties tests.**