

SHEEHAN PHINNEY

#2 of 9 Checklists in Series

Overtime Exemption Worksheets

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Introduction

With the changes to the Fair Labor Standards Act (FLSA) overtime exemptions (effective December 1, 2016) we prepared the following checklists for use by clients as they evaluate their overtime exemptions in their workplace. These checklists are intended as general outlines and guides to the Final Rule to update FLSA overtime white collar exemptions. These checklists are not intended as a substitute for specific legal advice.

FLSA ADMINISTRATIVE EXEMPTION CHECKLIST¹

Check if Applicable:

- 1. Employee is compensated, *on a **salary² or fee basis***, in the gross amount of at least **\$913.00** per week.
- 2. Employee's **primary duty** is the performance of **office or non-manual** work directly related to **management** or **general business operations** of the employer or the employer's customers;
- 3. Employee's **primary duty** includes the **exercise of discretion and independent judgment** with respect to matters of significance.

*If **ALL THREE** boxes are checked in this section then the employee qualifies for exemption from the FLSA's minimum wage and overtime requirements as an administrative employee.*

Note: If possible, attach recent copy of job description or analysis of job functions to support this exemption assessment.

¹ If employee does not qualify for the Administrative Exemption, he or she may qualify for the Executive or Highly Compensated Employee Exemptions. (See checklists #1 and #8)

² A maximum of 10% of the annual salary basis may be satisfied by incentive (e.g. bonus) payments.

ALSO NOTE: This is where positions succeed or fail with this exemption.

Administrative exemption—Independent judgment as to matters of significance

Some of the terms and phrases used in this Advisor have particular meanings that are specific to the Regulations, Part 541. These terms are defined here to help you better understand how the regulations apply to specific employment situations. As you run this Advisor you will have the opportunity to return to the glossary to review the definitions when the terms are used.

Discretion and independent judgment

In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. 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.

The exercise of discretion and independent judgment implies that one has authority to make an independent choice, free from immediate direction or supervision. However, discretion and independent judgment can be exercised even if the decision or recommendation is reviewed at a higher level. Thus, the term "discretion and independent judgment" does not require that the decisions being made have to be final or free from review. The fact that one's decisions may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that one is not exercising discretion and independent judgment.

Discretion and independent judgment with respect to matters of significance

The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance 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, even if the employee's assignments are related to operation of a particular segment of the business;
- 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;
- whether the employee has authority to negotiate and bind the company on significant matters;
- whether the employee provides consultation or expert advice to management;
- whether the employee is involved in planning long- or short-term business objectives;
- whether the employee investigates and resolves matters of significance on behalf of management; and

- whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly.

Note: If possible, attach recent copy of job description or analysis of job functions to support the exception assessment.

CERTIFICATION/ACKNOWLEDGMENT

We certify that the information contained in this checklist is true and correct.

Employer's Signature

Employee's Signature

Title

Title

Date

Date