**Exempt or Non-Exempt Status**

Employees generally are eligible for overtime for hours worked beyond 40 in a workweek. The exception to this rule is exempt employees (so called because they are exempt from the overtime rules). It is extremely important to have employees categorized correctly since there are significant consequences to misclassifying.

All employees who are classified as exempt (excepting Outside Sales) MUST meet the salary threshold of $684 per week.

However, pay is only one aspect of the classification. They also must meet one of the following duties tests. One key to the duties tests is the concept of PRIMARY DUTY. If someone performs a duty for 50% or more of a workweek, that would clearly be a primary duty; however, it is important to discuss primary duties with Catapult or a legal advisor if you are unsure.

Each of the duties tests has its own FLSA Fact Sheet, easily found by using the links in this overview document: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17a_overview.pdf> - Briefly, the Duties Tests are:

**Executive (Supervisory) Test:**

* Primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;
* Customarily and regularly directs the work of two or more other employees; and has the authority to hire or fire other employees or whose suggestions: and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

**Administrative Test:**

* Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
* Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

**Professional Employee Test (Learned and Creative):**

*Learned*

* Primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

*Creative*

* Primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

*(There is also a****computer professional exemption****for both salaried and hourly employees).*

**Outside Sales Test (PAY THRESHOLD DOES NOT APPLY):**

* Primary duty is making sales which involves obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
* Customarily and regularly engaged away from the employer’s place or places of business in performing such primary duty.

**Highly Compensated Individuals Test:**

* Compensated at the salary level not less than $107,432 or more, which includes at least $684\* per week paid on a salary or fee basis);  annual compensation may include commissions, non-discretionary bonuses, and other non-discretionary compensation;
* Primary duty includes performing office or non-manual work; and customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt, administrative, or professional employee; but is not required to meet every requirement of the tests for executive, administrative, or professional employees.

Written by a Catapult Advisor.