State University of New York

FLSA Professional Exemption Review

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| --- | --- | --- | --- |
| Position/Title |  | Campus Title: |  |
| Salary Level: |  | Department: |  |
| Line #: |  | Employee: |  |

**INSTRUCTIONS**

Complete this form based on the actual duties of the position as described in an attached position description. Answers must be supported by duties description.

**Professional Review**

|  |  | **Yes** | **No** |
| --- | --- | --- | --- |
| * Is the employee’s **primary duty** the performance of **work requiring advanced knowledge**, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
 |  | [ ]  | [ ]  |
|  | * “**Primary duty**” means the principal, main, major or most important duty that the employee performs.  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.
* It is a good “rule of thumb” for the primary duty to take about 50% of the worker’s time. However, time alone is not the only consideration. Other factors to consider include:
	+ the relative importance of the exempt duties compared to the nonexempt duties;
	+ the amount of time spent performing exempt duties;
	+ the worker’s freedom from direct supervision;
	+ the relationship between the worker’s salary and;
	+ wage paid to other employees for the same kind of exempt work.
 |  |  |  |
|  | * “**Work requiring advanced knowledge**” means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment.  Professional work is therefore distinguished from work involving routine mental, manual, mechanical or physical work.  A professional employee generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances.  Advanced knowledge cannot be attained at the high school level.
 |  |  |  |
| * Is the advanced knowledge in a **field of science or learning**;
 |  | [ ]  | [ ]  |
|  | * **Fields of science or learning** include law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other occupations that have a recognized professional status and are distinguishable from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type, but is not in a field of science or learning.
 |  |  |  |
| * Is the advanced knowledge **customarily acquired by a prolonged course of specialized intellectual instruction**.
 |  | [ ]  | [ ]  |
|  | * The terms “**customarily acquired by a prolonged course of specialized intellectual instruction”** is defined as follows: The learned professional exemption is restricted to professions where specialized academic training is a standard prerequisite for entrance into the profession.  The best evidence of meeting this requirement is having the appropriate academic degree.  However, the word “customarily” means the exemption may be available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction.  **This exemption does not apply to occupations in which most employees acquire their skill by experience rather than by advanced specialized intellectual instruction.**
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**Creative Professional Review**

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|  |  | **Yes** | **No** |
| * Is the employee’s **primary duty** the performance of work requiring **invention, imagination, originality or talent** in a **recognized field of artistic or creative endeavor**.
 |  | [ ]  | [ ]  |
|  | * “**Primary duty**” means the principal, main, major or most important duty that the employee performs.  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.
* It is a good “rule of thumb” for the primary duty to take about 50% of the worker’s time. However, time alone is not the only consideration. Other factors to consider include:
	+ the relative importance of the exempt duties compared to the nonexempt duties; the amount of time spent performing exempt duties;
	+ the worker’s freedom from direct supervision; the relationship between the worker’s salary and;
	+ wage paid to other employees for the same kind of exempt work.
 |  |  |  |
|  | * This requirement distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy.  Exemption as a creative professional depends on the extent of **the invention, imagination, originality or talent** exercised by the employee.  Whether the exemption applies, therefore, must be determined on a case-by-case basis.  The requirements are generally met by actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, novelists, and others as set forth in the regulations.  Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality or talent.  Journalists are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product.
 |  |  |  |
|  | * **Recognized Field of Artistic or Creative Endeavor** includes such fields as, for example, music, writing, acting and the graphic arts.
 |  |  |  |

**Teacher Professional Review**

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| --- | --- | --- | --- |
|  |  | **Yes** | **No** |
| * Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment.  Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers.  The salary and salary basis requirements do not apply to bona fide teachers.
 |  | [ ]  | [ ]  |

**Law & Medicine Professional Review**

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| --- | --- | --- | --- |
|  |  | **Yes** | **No** |
| * An employee holding a valid license or certificate permitting the practice of law or medicine is exempt if the employee is actually engaged in such a practice.  An employee who holds the requisite academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession.  The salary and salary basis requirements do not apply to bona fide practitioners of law or medicine.
 |  | [ ]  | [ ]  |

Copy of job description attached

Completed by Date

HR Review Date Meets salary threshold Y/N