

New FLSA Regulations for Exempt Employees

(Contributed by Shannon C. Oury – 09/2005)

WWW.STEVENSBRAND.COM

STEVENS & BRAND^{LLP}

EXECUTIVE EMPLOYEES			
29 C.F.R. § 541.100(a)(2)-(4)			
	Old Long Test	Old Short Test	New Standard Test
Salary	\$155 per week	\$250 per week	\$455 per week
Duties	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of 2 or more employees.</p> <p>Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or the change of status of other employees are given particular weight).</p> <p>Customarily and regularly exercises discretionary powers.</p> <p>Does not devote more than 20% (40% in retail or service establishments) of time to activities that are not directly and closely related to exempt work.</p>	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p>	<p>Primary duty is the management of the enterprise or a customarily recognized department or subdivision;</p> <p>Who customarily and regularly directs the work of two or more other employees; and</p> <p>Has authority to hire or fire other employees (or whose recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight).</p> <p>Business Owner: The term employee employed in a bona fide executive capacity includes any employee who owns at least a bona fide 20% equity interest in the enterprise and who is actively engaged in its management. 29 CFR § 541.101</p>

HIGHLY COMPENSATED EMPLOYEES			
29 C.F.R. § 541.601			
	Old Long Test None	Old Short Test None	New Standard Test
Salary			\$100,000 annual compensation
Duties			If the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee.

ADMINISTRATIVE EMPLOYEES			
29 C.F.R. § 541.200			
	Old Long Test	Old Short Test	New Standard Test
Salary	\$155 per week	\$250 per week	\$455 per week
Duties	<p>Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers.</p> <p>Customarily and regularly exercises discretion and independent judgment.</p> <p>Does not devote more than 20% (40% in retail or service establishments) of time to activities that are not directly and closely related to exempt work.</p>	<p>Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers.</p> <p>Customarily and regularly exercises discretion and independent judgment.</p>	<p>Primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and</p> <p>Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.</p> <p>The term "matters of significance" refers to the level of importance or consequence of the work performed. 29 CFR § 541.202(a)</p>

LEARNED PROFESSIONAL EMPLOYEES			
29 C.F.R. § 541.300			
	Old Long Test	Old Short Test	New Standard Test
Salary	\$170 per week	\$250 per week	\$455 per week
Duties	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20% of time to activities that are not an essential part of and necessarily incident to exempt work.</p>	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>Consistently exercises discretion and judgment.</p>	<p>Whose primary duty is 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, or</p> <p>Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.</p> <p>Learned professionals may use manuals, guidelines or other established procedures that give guidance about highly complex information relevant to difficult or novel circumstances without losing the exemption. The exemption is not available, however, to employees who merely apply well-established techniques or procedures with closely prescribed limits to determine the correct response. 29 C.F.R. § 541.704</p>

OUTSIDE SALES EMPLOYEES			
29 C.F.R. § 541.500			
	Old Long Test	Old Short Test	New Standard Test
Salary	None required	None required	None required
Duties	<p>Employed for the purpose of and customarily and regularly engaged away from the employer’s place of business in making sales; or in obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.</p> <p>Does not devote more than 20% of the hours worked by non-exempt employees of the employer to activities that are not incidental to and in conjunction with the employee’s own outside sales or solicitations.</p>	<p>No separate “short” test.</p>	<p>Primary duty of making sales; or of obtaining orders or contracts for services or for services or for the use of facilities for which a consideration will be paid by the client or customer; and</p> <p>Who is customarily and regularly engaged away from the employer’s place or places of business in performing such primary duty.</p>

COMPUTER EMPLOYEES 29 C.F.R. § 541.400			
	Old Long Test	Old Short Test	New Standard Test for Sections 13(a)(1) & 13(a)(17)
Salary	\$170 per week	\$250 per week	\$455 per week or \$27.63 an hour
Duties	<p>Primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20% of time to activities that are not directly and closely related to exempt work.</p>	<p>Primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.</p> <p>Consistently exercises discretion and judgment.</p>	<p>Primary duty of (1) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or (2) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or (3) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (4) a combination of duties described in (1), (2) and (3), the performance of which requires the same level of skills.</p> <p>Covers those employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field. This exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. 29 C.F.R. § 541.401</p>