

**OTTERBEIN COLLEGE  
OFFICE OF HUMAN RESOURCES**

**ANALYSIS TOOL FOR FLSA EXEMPTION**

Effective August 23, 2004 the Department of Labor (DOL) implemented new regulations for the administration of the Fair Labor Standards Act (FLSA). The new regulations provide updated criteria for employers to use in determining which employees are subject to or exempt from the overtime provisions of the Act. Employees who are subject to overtime and record-keeping stipulations mandated by the FLSA are considered "non-exempt"; employees who have an "exempt" FLSA status are not covered by the overtime and record-keeping requirements of the Act. The Department of Labor considers all employees subject to overtime and minimum wage requirements unless their positions have been specifically determined to be exempt. This exemption is based on an evaluation of the employee's duties and responsibilities, which may offer an exemption if the position is considered executive, administrative, professional, professional creative, or in certain computer-related occupations. At Otterbein College the Director of Human Resources makes the determination of FLSA status. The determination is based on the nature and the requirements of work performed and is not directly related to job title, salary grade, or status.

Additional information and definitions on exemption requirements are available from the Department of Labor website:  
<http://www.dol.gov/esa/regs/compliance/whd/fairpay/main/htm>.

POSITION TITLE: \_\_\_\_\_

SUPERVISOR'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**SALARY QUESTIONS**

	YES	NO
1. Does the position pay (or employee earn) at least \$455 per week?		
2. Does the position pay (or employee earn) at least \$23,660 per year?		
3. Does the position pay (or employee earn) at least \$100,000 per year?		
<b>Determining Factor(s):</b> If the answer to the questions 1 and 2 above is "no", then the employee is NOT EXEMPT from the FLSA minimum wage and overtime requirements. In which case, the employee must complete a time sheet to accurately record all hours worked for each pay period. If the answer to question 3 is "yes", then the employee <u>may</u> be exempt as a highly compensated employee.		

**DUTIES QUESTIONS**

	YES	NO
<b>EXECUTIVE EXEMPTION</b>		
1. Is the primary duty of the position to manage a customarily recognized department or unit of the College or its major division?		
2. Does the position regularly supervise the full time equivalent of two "permanent" employees?		
3. Does the position have the authority to make personnel decisions such as hiring, terminating, or disciplining?		
<b>Determining Factor(s):</b> An employee may be eligible for an executive exemption only if <u>all</u> responses are "yes". " <u>Management</u> " includes interviewing, hiring, training, directing work, appraising employees' work, disciplining, planning and controlling the work unit's budget, and monitoring/implementing legal compliance measures. A " <u>customarily recognized department or unit</u> " must be a permanent institutional arrangement with continuing functions, such as Human Resources		

or one of its permanently established departments. "Permanent " is a status and means the worker is not a temporary or student worker.		
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	YES	NO
<b>ADMINISTRATIVE EXEMPTION</b>		
1. Is the primary duty of the position to perform office or non-manual work that is directly related to the management or general business operations of the College and its customers? <b>NOTE:</b> Work "directly related to management policies or general business operations" involves assisting with running or servicing a business, as distinguished from "production" work. Administrative operations include advising management, planning, negotiating, purchasing, and business research and control. Management or general business operations includes (however, is not limited to) work in the areas of research, quality control, legal/regulatory compliance, public/government relations, safety and health, personnel management, human resources, employee benefits, accounting, and/or auditing.		
2. Does the position customarily and regularly exercise discretion and independent judgment relative to matters of significance? <b>NOTE:</b> The "exercise of discretion and independent judgment relative to matters of significance" implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision, regarding matters significant to the business operations. Determining factors include but are not limited to: whether the employee has authority to commit the College in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies/procedures without prior approval; whether the employee has authority to negotiate and bind the College on significant matters; whether the employee is involved in planning business objectives.		
<b>Determining Factor(s):</b> An employee may be eligible for an administrative exemption only if <u>all</u> responses are "yes". (Employee must spend more than 50% of their time performing the above. If job requires more than 50% of their time performing clerical work they are non-exempt.)		

	YES	NO
<b>LEARNED PROFESSIONAL EXEMPTION</b>		
1. Is the primary duty of the position to perform work requiring knowledge of an advanced type in a field of science or learning that is customarily acquired by a prolonged course of specialized intellectual instruction? <b>NOTE:</b> "Advanced knowledge" cannot be attained at the high school level. The primary duty must consist of performance of (a) work requiring knowledge of an advanced type in the field of science or learning, customarily acquired by a prolonged course of specialized intellectual instruction and study (doctors, lawyers, engineers, chemist, nurses, etc.) or (b) work that is original and creative in character, and the result of which depends primarily on the invention, imagination, or talent of the employee (e.g., artists, professional creative and technical writers/authors, architects, designers, musicians, etc.) or (c) teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge, or (d) work that requires theoretical and practical application of highly-specialized knowledge as in computer systems analysis, programming, and software engineering (see below regarding computer exemption).		
2. Is the primary duty of the position to teach, tutor, instruct, or lecture for the purpose of imparting knowledge to students? Example: Faculty members who are employed as teachers but who also append a considerable amount of their time in extracurricular activities such as coaching athletic s teams or acting as moderators or advisor in areas such as drama, speech, or journalism are engaged in teaching. <b>NOTE:</b> Salary level requirement does not apply to teaching professionals.		

	YES	NO
<b>COMPUTER EXEMPTION</b>		
1. Is the primary role of the position a computer systems analyst, computer programmer, software engineer, or one requiring similar skills in the computer field?		
2. Does the primary (50% or more) duty of the position to consist of systems (prototypes or machine operating) design, creation, development, documentation, analysis, testing, and/or		

modification of programs and/or consultation with users to determine hard/software or system functional specifications?		
3. Is the employee compensated <b><i>either</i></b> on a salary or fee basis at a rate not less than \$455 per week <b><i>or</i></b> , if compensated on an hourly basis, at a rate not less than \$27.63 an hour?		
<b>Determining Factor(s):</b> An employee may be eligible for a computer exemption only if all responses are “yes”. The computer employee exemption does not include those who manufacture or repair computer hardware and related equipment or whose work is highly dependent on the use of computer hardware or software.		

***Attach Job Description***

FOR COMPLETION BY THE HUMAN RESOURCES DEPARTMENT
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Based on the above analysis, the employee is classified as (check one):

☐ **Exempt**

☐ **Non-Exempt**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date