

## FLSA: Exemption Test Questionnaire

Incumbent's Current Job Title:	Information Technology Supervisor
Incumbent's Name:	Davies, Walter
Department:	Information Technologies
Supervisor's Name:	Pandey, Kumar
Supervisor's Title:	Deputy Director of Information Technologies
Date Completed:	9/12/18
Completed by:	Jan Bentley
Comments:	Please see attached comment sheet.
Recommendation:	<b>Position: Exempt</b> <b>Class: Exempt</b>

**Please note that an employee must meet the salary basis test to be exempt under the FLSA. If the person in the position earns less than the minimum required salary (\$880 per week), do not proceed with completing this questionnaire. The position is considered non-exempt and is subject to the overtime provisions of the FLSA.**

### Instructions:

1. Read the criteria for each exemption category (executive, administrative, computer, learned professional, or creative professional).
2. Place an x in each box that applies to this position. You may check boxes in more than one exemption category. Give specific and detailed answers to the questions asked.
3. After checking the relevant boxes and providing detailed answers, please go to the last page and make a recommendation in the exempt or non-exempt box. Add any final comments or supporting remarks in the space reserved for additional comments.

### Executive Employee Exemption

Exempt executive employees generally are responsible for the success or failure of business operations under their management. Other critical elements are (1) primary duty is managing a department, division, or other permanent organizational unit, (2) whether the employee directs the work of two or more full-time equivalent employees, (3) whether the employee has the authority to hire/fire other employees or, alternatively, whether the employees suggestions and recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees are given particular weight, and (4) not closely supervised.

	YES	NO
1. Positions is paid on "salary basis"	YES	
2. Employee is paid established salary on weekly or longer basis irrespective of the number of hours worked.	YES	
3. Does the employee's primary duty consist of managing the enterprise or a customarily recognized department or division thereof? If yes, please describe:	YES	If no, the employee is not exempt under this test.
4. Does the employee regularly and customarily supervise two or more employees who are employees in the department or subdivision that the employee manages? If yes, please indicate if the employee is responsible for the items below.	YES	If no, skip to question #6
Interview, select and train employees? Coach employees in proper job performance techniques and procedures?	YES	
Direct the work of employees and set/adjust their rates of pay and hours of work?	YES	
Maintain records on employee productivity for use in supervision or control?	YES	
Appraise employee's productivity and efficiency to recommend promotions for other changes in status?	YES	
Handle (determining) employee complaints and grievances and discipline employees when necessary?	YES	
Plan other employees work and determine the techniques used in their work?	YES	
Apportion work among different employees?	YES	
Determine the types of materials, supplies, or tools to be used by other employees? Control the flow and distribution of materials and supplies?	YES	
Provide for the safety of employees and the property of the employer?	YES	
Control the budget? If yes, please explain:  <i>Is responsible for monitoring expenditures for assigned area of responsibility and ensuring that budget is not exceeded</i>	YES	
Monitor or implement legal compliance measures?	YES	
5. Does the incumbent have the authority to hire or fire		NO

other employees?		
If no, is it part of the incumbent's job to make recommendations on hiring, firing advancement, or other change of status?	YES	
Are the incumbent's recommendations frequently relied upon?	YES	
5. What percent of working time does the incumbent spend performing the leadership duties and responsibilities described in questions 5 – 7 above?	40%	
6. List the employees whose work is customarily and regularly directed by the incumbent.  Dmitriy Obutkov, Tom Bullock, Sandra Kessler, Russ Barnes, Kelli Kiser, Tricia Brannaugh, Arlen Dockter		

### Administrative Employee Exemption

The duties portion of the administrative exemption test establishes a two-part inquiry for determining whether an employee performs exempt administrative duties. (1) Administrative work directly related to the management or general business operations of the County or the County’s customers’, (2) work relating to administrative activities of the county, as distinguished from “production” type activities, and (3) Administrative work includes the exercise of discretion and independent judgement regarding significant matters. All of the relevant factors must be considered when determining whether an employee in an administrative position is exempt.

Questions: What type of work is performed by the employee? Is the primary duty the performance of work directly related to management or general business operations? What is the level or nature of the work performed? Does the employee’s primary duty include the exercise of discretion and independent judgment with respect to matters of significance?

Examples:

- Administrative assistants who assist an executive/manager in the performance of the manager’s duties, *e.g.*, Assistant to City Manager, Executive Secretary.
- Staff specialist positions who advise management, *e.g.*, insurance experts, compensation analysts, investment and financial consultants.
- Controls manner of handling administrative functions after comparing alternatives.
- An executive secretary who “screens” incoming mail and determines whether to answer correspondence personally, call it to the attention of her “boss,” or route it to someone else for reply, uses discretion and independent judgment; but merely opening mail and routing it to the “boss” or other addressee does not constitute use of discretion.
- Computer network, Internet, and database administrators who perform work directly related to management or general business operations.

	YES	NO
<b>1. Please describe the incumbent’s primary duty:</b>		
Is this primary duty directly related to the management or general business operations of the county or its customers?	YES	If no, the employee is not exempt under this test.
2. Does the incumbent’s primary duty require the exercise of discretion and independent judgment with respect to matters of significance? If yes, please respond to the questions below.	YES	If no, the employee is not exempt under this test.
Have the authority to formulate, affect, interpret, or implement management policies or operating practices? If yes, please provide an example:	YES	

Carry out major assignments in conducting the operations of the county?	YES	
Perform work that affects business operation to a substantial degree?	YES	
Have the authority to commit the county in matters that have significant financial impact? If yes, please provide an example:		NO
Provide consultation or expert advice to management?	YES	
Have authority to negotiate and bind the county on significant matters? If yes, please provide an example:		NO
Have involvement in planning long or short-term business objectives?	YES	
Investigate and resolve matter of significance on behalf of management? If yes, please provide an example:  <i>Directs staff to investigate and resolve technical issues associated with mainframe operations</i>	YES	
Represent the county in handling complaints, arbitrating disputes or resolving grievances? If yes, please provide an example: <i>Represents the County in personnel-related matters regarding assigned staff</i>	YES	

### Computer Employee Exemption

An employee who meets the consolidated duties test for computer professionals will be exempt if he or she meets either the salary or fee basis test or is paid at least \$43.58 hourly. To qualify as an exempt computer employee, a worker must have a primary duty that consists of the four duties described under #3 below. The primary duty requirement applies to both salaried and hourly computer employees.

	YES	NO
1. Is the employee compensated on either a salary or fee basis at a rate not less than \$90,790.07 per year or, if paid hourly, \$43.58 per hour?	YES (assumes EE is at Step 3 or higher of range)	If no, stop. The employee is not exempt under this test.
2. Is the incumbent employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field? If yes, please describe the incumbent's primary duty:	YES	If no, stop. The employee is not exempt under this test.
3. Does the incumbent's <b>primary</b> duty consist of:		
<ul style="list-style-type: none"> <li>The application of systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional specifications? If yes, please give an example:  <i>Gathers information on customer needs and issues with regard to improving mainframe system functionality; works on major project moving mainframe data over to client/server systems; conducts feasibility studies and cost/benefit analyses.</i></li> </ul>	YES	
<ul style="list-style-type: none"> <li>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? If yes, please give an example:</li> </ul>		NO
<ul style="list-style-type: none"> <li>The design, documentation, testing, creation, or modification of computer programs related to machine operating systems? If yes, please give an example:  <i>Develops system logic and processing steps; develops programs to enhance and support server and system functionality</i></li> </ul>	YES	
<ul style="list-style-type: none"> <li>A combination of the aforementioned duties, the performance of which requires the same level of skills?</li> </ul>	YES	

### Professional Employee Exemption

The professional exemption actually encompasses two exemptions one for ***learned professionals***. To be an exempt learned professional an employee must have a primary duty that is the performance of work requiring knowledge of an advanced type including the consistent exercise of discretion and judgment in a field of science or learning where the advanced knowledge is acquired by a prolonged course of specialized intellectual instruction (examples include lawyers, doctors, architects, teachers, etc.). The other professional exemption is for ***creative professionals***. The creative professional exemption applies to jobs such as actors, musicians, composers, writers, cartoonists and some journalists. It is meant to cover employees whose work requires invention, imagination, originality, or talent.

<b>Learned Professional Employee</b>	<b>YES</b>	<b>NO</b>
1. Is the employee paid on "salary basis" (see Executive Exemption above) or "fee basis" (see Administrative Exemption above)?	YES	
2. Does the incumbent's primary duty require knowledge of an advanced type in a field of science or learning customarily acquired by prolonged course of specialized intellectual instruction and study (learned professional)?		NO If no, go to Creative Professional
3. Please describe the incumbent's <b>primary</b> duty:		
4. Is the incumbent's <b>primary</b> duty predominantly intellectual in character? If yes, please describe.		
5. Does the incumbent's <b>primary</b> duty require that his or her advanced knowledge be used to analyze, interpret, or make deductions from varying facts or circumstances? If yes, please give an example.		
6. Does the incumbent's primary duty include the consistent exercise of discretion and judgment?		
<b>Creative Professional Employee</b>		
1. Is the employee paid on "salary basis" (see Executive Exemption above) or "fee basis" (see Administrative Exemption above)?	YES	
2. Is the employee's primary work duty work that requires invention, originality, or talent?		NO If no, stop. The employee is not exempt under this test.
3. Please describe the employee's primary work duty.		

Incumbent's Current Job Title:	Information Technology Supervisor
Incumbent's Name:	Davies, Walter
Department:	Information Technology

Analysis/Comments:

General:

Federal law (the Fair Labor Standards Act) requires employers to pay overtime to employees who work more than 40 hours in a workweek, unless such employees qualify for exemption from the law's requirements. Most states also have overtime laws that parallel, or in some cases exceed, the federal requirements. California's overtime laws are even more restrictive than the federal laws when it comes to overtime requirements and exemptions, and California's courts have leaned toward a strict interpretation of the law. Thus, when evaluating jobs for potential exemption from overtime laws in California, employers may be prudent to adopt a conservative approach by exempting positions from overtime only if they strongly and unequivocally meet the established standards.

It is also important to recognize that the law requires positions to be evaluated on an individual basis, with consideration given to an incumbent's actual job duties rather than simply a class description. Thus, if an organization seeks to establish an overtime status that can be applied to all positions within a class, such status must accommodate the least qualified position in the class and also should consider the possibility that future employees may only have the minimum qualifications established for the class.

Some of the state and federal exemption standards are narrowly defined and apply to very limited types of jobs. Others are broader and applicable to a wider spectrum of positions. For this position, the only exemptions considered potentially applicable were those identified above, specifically the Executive, Administrative, Computer, and Professional exemptions. However, all exemptions share some common criteria:

1. Executive, administrative and professional workers must meet certain compensation criteria. In California, exempt employees must be compensated on a "salary" basis and must make an amount that is at least twice the minimum wage rate (currently \$880/week).
2. The salary threshold for exempting employees solely under the "Computer Professional" standards is much higher (\$90,790.07 per year or, if paid hourly, \$43.58 per hour).
3. While not specifically mentioned in the law, primary duties are generally those that occupy at least 50% of an incumbent's time.
4. The phrase "customarily and regularly performed" signifies a frequency that is more than occasional but can be less than constant.
5. Duties performed due to the temporary absence of another employee (e.g., acting as a supervisor in the absence of the regular supervisor) are not considered primary.
6. Most exemptions require the employee to customarily and regularly exercise discretion and independent judgment, which involves comparing and evaluating possible courses of conduct and acting or making a decision after considering various possibilities. Generally, employees who meet this criteria:
  - Have the power to make independent choices free from immediate supervision and with respect to matters of significance; or
  - Are able to make a recommendation for action subject to the final authority of a superior, as long as the employee has sufficient authority for the recommendation to affect matters of consequence to the business of the employer's customers.



Other factors to consider include 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; whether the employee has authority to commit the employer in matters that have significant financial impact; and whether the employee has authority to waive or deviate from established policies and procedures without prior approval. The fact that an employee's decisions are reversed after review does not mean that the employee is not exercising discretion and independent judgment. However, the employee must do more than apply well-established techniques, procedures, or specific standards described in manuals or other sources. Furthermore, an employee who merely applies his/her knowledge in following prescribed procedures or in determining which procedures to follow, or determines whether specified standards are met, or whether an object falls into one or another grade or class, is not exercising discretion and judgment of the independent sort associate with exempt status. An exempt employee must make decisions that involve matters of consequence that are of real and substantial significance to the policies or general operation of the business or its customers. Even if the tasks are related directly to only a particular business segment, they must still have a substantial effect on the whole business.

7. Exercising discretion and independent judgment on matters of consequence is different than making decisions that can lead to serious loss through the choice of wrong techniques, improper application of skills, neglect, or failure to follow instructions.
8. Employees who are in training for an exempt position are not exempt unless they are actually performing the duties of the exempt position.
9. Supervision of student or part-time workers is not considered equivalent to supervising full-time employees.

Analysis Specific to This Employee/Position:

*(Please note that the following analysis is based on the most recently proposed class specification for Information Technology Supervisor).*

The County of El Dorado is proposing to re-title the current class of Supervising Information Technology Analyst to Information Technology Supervisor. Incumbents plan, supervise, organize, coordinate, and review the work of staff responsible for the planning, design, and implementation of County-wide technology programs and services. They implement division priorities, goals, and objectives; monitor and evaluate service delivery models and recommend changes; and perform professional information technology analytical duties as needed. There are currently three allocated positions in the Information Technologies Department, each responsible for a division consisting of 7-8 full-time employees.

In evaluating this position of Information Technology Supervisor, the standards for an Executive exemption **are** applicable. The incumbent is responsible for managing a division, or other permanent organizational unit, and supervises at least two full-time employees. Although the incumbent does not have full authority to hire/fire other employees, suggestions and recommendations as to the hiring, firing, advancement, promotion, or other change of status of other employees are given substantial weight.

The incumbent's Position Description Questionnaire (PDQ) states that supervision only occupies approximately 40% of his time. Therefore, this position is not qualified for exemption based on the Executive criteria alone. However, the position also meets the standards for an Administrative exemption, based on the incumbent's leadership role over a functional area that has significant impact on the overall business of the County. As a supervisor, the incumbent exercises discretion and independent judgment with respect to matters of significance, particularly with regard to the formulation, interpretation, or establishment of policies and procedures for information technology mainframe and operating system activities. He also participates in long-term organizational planning but has limited authorization to commit the organization in matters of significance.

The Learned/Creative Professional exemption is not applicable to this position. The job does not require knowledge of an advanced type acquired by a prolonged course of specialized intellectual instruction. The class requires applicants to possess a bachelor's degree; however, the recognized major areas of study are broad, flexible, and technical rather than scientific. Furthermore, applicants who possess acceptable nationally recognized industry-specific certifications may qualify without a degree, suggesting that the essence of the required knowledge is not necessarily based on formal instruction but can be obtained through extensive on-the-job experience. For these and other reasons, this position is not eligible for a Learned/Creative Professional exemption.

In comparing the position to the criteria for a "Computer Employee" exemption, the following was identified in the PDQ completed by the incumbent in May 2018:

1. The anticipated County salary for Information Technology Supervisor ranges from \$40.19/hour to \$48.86/hr. Therefore, the position would meet the salary basis for exemption providing that the incumbent is at **Step 3 or higher** of the salary range. Based on the number of years that this employee has been employed in his position, that is presumed to be the case.
2. The employee is employed as a Supervising Information Technology Analyst (mainframe/operating system focus). Although the incumbent is a supervisor, his PDQ states that the majority of his time is spent performing professional information technology analytical work.
3. The incumbent performs advanced analytical work with an emphasis on:
  - Modifying existing systems based on departmental priorities and customer requests;
  - Designing, modifying, and enhancing computer systems to support customer needs; and
  - Creating internal tools and program scripts to improve system function and efficiency.
4. Based on the above, the incumbent's duties meet the criteria for exemption because they involve:
  - Applying systems analysis techniques, including consulting with users to determine hardware, software, or system functional specifications; and
  - Designing, developing, documenting, analyzing, creating, testing, or modifying computer systems, programs, or prototypes based on and related to user or system design specifications.
5. The incumbent's duties require the application of substantial discretion and independent judgment to determine the most efficient way to meet customer needs, plan for system development, improve system performance, and resolve system problems.

Based on the above, this position meets the exemption standards for "Computer Professionals" (as long as the salary is qualifying). While meeting this standard is sufficient to exempt the **position**, it may not be prudent to exempt the class of Information Technology Supervisor on this basis alone, since future incumbents may not meet the salary standard if they are at a lower step in the salary range. However, the position is also marginally qualified under the Administrative exemption. Furthermore, his supervisory duties, while not primary, also contribute to the totality of work that meets the standards for exemption.

#### Summary/Conclusion:

I recommend that this **position** be exempted from overtime based on a combination of Computer Professional, Administrative, and Executive exemption standards. While none of these exemptions would, by itself, strongly support exemption, it is allowable under state law to consider the combination of work, which in this case is sufficient to meet the criteria. For similar reasons, I consider the **class** of Information Technology Supervisor to be eligible for exemption as well.