

**GUIDE TO THE
FAIR LABOR STANDARDS ACT
(FLSA)**

U.S. Department of Labor

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1. What is coverage?

Coverage refers to whether or not the law applies to you. If you are "covered," the Fair Labor Standards Act (FLSA) applies to your business. If you are "not covered," the FLSA does not apply to you. However, state and local laws may still apply. If you have any questions about state labor laws, contact the Utah State Industrial Commission at (801) 530-6801.

2. How do I know if I am covered by the FLSA?

There are several ways in which you may be covered. The simplest of these are "named enterprises." These are industries which are specifically named in the FLSA as being covered by its provisions. These industries are hospitals; residential care facilities that care for those who are physically or mentally ill or disabled, or the aged; schools for children who are mentally or physically disabled or gifted; pre-schools, day care centers, elementary and secondary schools, and institutions of higher learning regardless of the annual dollar volume. Public agencies are also specifically named.

If you are not a named enterprise, you may still be covered through enterprise coverage. An enterprise which has a gross annual dollar volume in excess of \$500,000 and employs two or more employees is covered.

If you are not a named enterprise and you do not have a gross annual dollar volume in excess of \$500,000, there may still be circumstances under which your employees are protected by the law. This is the most complicated kind of coverage, and it is called individual coverage. It is complicated because you must examine the duties of each of your employees 'individually. Employees who are engaged in interstate commerce (i.e., telephone operators, truck drivers, mail delivery, etc.) as well as those that are engaged in the production of goods for commerce (i.e., Joe Smith of ABC Inc. in Utah makes widgets that are sent to Sam Spade & Co. in New York) are covered by the FLSA in those weeks in which they engage in the interstate activity, regardless of the employees annual dollar volume of business. In addition, those employees whose job duties are closely related and directly essential (CRADE) to interstate commerce are also covered in the weeks in which they engage in the CRADE interstate activities.

Such covered employees include those who: work in communications or transportation; regularly use the mails, telephones, or computers for interstate communication or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross state lines in the course of employment; accept and process credit card transactions which are cleared out of state; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

There is one final way in which your firm may be covered. Companies whose employees are not protected by the preceding methods of coverage (named, enterprise, or individual) but whose employees were covered by the FLSA on March 31, 1990, continue to be subject to the FLSA. This is referred to as "preservation of coverage" by the 1989 amendments to the FLSA and maintains the overtime and child labor provisions of the FLSA and the minimum wage in effect on that date (\$3.35 per hour). Under this clause, the named enterprises included laundry and dry cleaning establishments and construction businesses. Therefore, any employer in these industries who was in business on March 31, 1990, is covered.

Employees of retail establishments with annual dollar volume of sales of at least \$362,500 and who were in business on March 31, 1990, are covered. Also, employees of non-retail establishments with annual dollar volume of sales of at least \$250,000 and who were in business on March 31, 1990, are covered as well.

3. What does it mean if I am covered by the FLSA?

It means that you must comply with the provisions of the FLSA: you must have paid your employees at least \$4.75 per hour or the equivalent until August 31, 1997, and beginning September 1, 1997, at least \$5.15 per hour or the equivalent. This is the current statutory minimum wage, and no less than this amount is due for every compensable work hour (or fraction thereof). It also means you must pay overtime at one and one-half times the employees' regular rate of pay for all compensable hours (or fractions thereof) actually worked in excess of 40 per work week. There are records you are required to keep, and there are restrictions on the ages, hours, times, and occupations for minors employed by you who are under the age of 18 years. These requirements are explained in greater detail in the answers to the following questions.

Beginning October 1, 1996, employers may pay a minimum wage of not less than \$4.25 an hour for youths who are under 20 years of age and in the first 90 consecutive days of initial employment with their employer. Eligible youths are initially employed only once by an employer. All consecutive days beginning with the first date of work for an employer count against the 90 consecutive calendar days of eligibility, regardless of how many days during this period the youth actually performs any work.

4. What is an employee?

It is easier to say what an employee is not. An employee is not a trainee, and an employee is not a bona fide independent contractor. Anyone whom you "suffer or permit to work" for you, other than one working exclusively in the aforementioned categories, is considered an employee.

5. What criteria must be met to be considered as a trainee or independent contractor?

To be considered a trainee, the training received must be similar to that which would be given in a vocational school. The training must be for the benefit of the trainee, and trainees must not displace regular employees. The employer that provides the training must derive no immediate advantage from the trainee's activities, and on occasion the employees operations may actually be impeded. The trainee must understand that he/she is not necessarily entitled to a job at the conclusion of the training period, and there must also be an understanding between the employer and the trainee that the trainee is not entitled to wages for the time spent in training. All of these criteria must be met in order to qualify as a trainee.

To be considered a bona fide independent contractor, the services provided by the independent contractor (IC) cannot be an integral part of the employer's business. As an example, a painter may be working as an independent contractor when he/she works for a restaurant owner (painting and restaurants are two distinct operations), but the same painter may not be an independent contractor

when he/she is working for another painter. True independent contractor relationships are marked by their relatively short duration, and a relationship with more permanency indicates that the IC in question is actually an employee. ICs usually have a significant investment in their own facilities, tools, and equipment, as well as an opportunity for profit or loss depending on their own business skill. The employer must not control the IC's business, i.e., the hours of operation, the jobs accepted or declined, the rates/fees set, etc., must be left to the discretion of the IC. Finally, the bona fide independent contractor must exhibit initiative and foresight in open-market competition with others in his/her industry, and the success of the alleged independent enterprise must depend on this initiative/judgement as opposed to being supported by the employer. All of these criteria must be met in order to qualify as an independent contractor.

For more information on this topic, please call our publications mail box at (801) 524-5706, and request publication WH-1297.

6. *What is a "compensable work hour?"*

Federal regulations define a compensable work hour as anything "suffered or permitted." Suffered or permitted means that even if an employee voluntarily works before or after his/her scheduled work time, either at the work place or at home, the time is considered to be compensable regardless of the reason the additional time was worked. In addition, if an employee's time is not their own to use as they will (i.e., "waiting for business," "on-call" time, or time spent in travel for the employer), the employer is obligated to compensate the employee for this time. Rest periods of short duration (usually 20 minutes or less) are common in industry and promote the efficiency of the employee. Such breaks are customarily paid for as working time, and must be counted as hours worked. A rest or meal period where the employee is completely relieved of his/her duties (at least 30 minutes or more) need not be counted as compensable work time. However, the employee is not relieved of his/her duties if he/she is required to perform any duties, whether active or inactive, while eating.

For more information on this topic, please call our information mail box at (801) 524-5706 and request publication 29 CFR 785.

7. *How do I determine the employee's regular rate of pay?*

The regular rate of pay is computed by taking all remuneration paid, including hourly pay, salary, commission, piece rate, and any other form of compensation and dividing this amount by all the hours actually worked. This amount must be at least the current minimum wage of \$5.15 per hour for wages earned beginning 12:01 a.m. September 1, 1997. For wages earned prior to September 1, 1997, the amount must be at least the previous minimum wage of \$4.75. If it is less than this amount, the employer must bring the employee up to at least the minimum wage. The only types of pay not included when computing the regular rate are payments for expenses incurred on the employer's behalf, premium payments of at least time and one-half the regular rate paid for overtime work, discretionary bonuses, and gifts and payments in the nature of gifts for special occasions. You need not include wages paid for hours not worked, such as paid holidays, vacation or sick days where no work is performed.

8. How do I determine a "work week?"

A work week is defined as seven consecutive 24-hour periods. All seven days of the week must be accounted for. It can start on any day of the week and at any time of the day, as long as it stays the same from one work week to the next. For example, your work week could follow a calendar week, and go from midnight on Saturday to the following Saturday at 11:59 p.m. Or, you can choose another seven day period, such as from Tuesday at 9:00 a.m. to the following Tuesday at 8:59 a.m. However, you cannot switch back and forth between the two. Any change in the work week must be intended to be permanent.

9. How do I compute and pay overtime?

Unless an employee is specifically exempted, overtime is due at time and one-half the regular rate of pay (as defined under Question 7) when more than 40 hours are actually worked (as defined under Question 6) in any one work week (as defined under Question 8). Overtime should be paid in the pay period it was earned.

Overtime is not an option. An employee may not waive their right to receive overtime pay when overtime is worked. Overtime must be computed on a work week basis, and each work week must stand alone. You cannot average the hours worked in one week with the hours worked in another week. As an example, if an employee worked 30 hours in one week and 50 hours in the next week, the employee would still be due 10 hours of overtime pay for the week in which he/she worked 50 hours, despite the fact that the employee's work hours did not exceed 80 hours for the two-week pay period.

For more information on this topic, please call our publications mail box at (801) 524-5706 and ask for publication 29 CFR 778.

10. What records do I need to keep?

You need to keep records of wage computations (i.e., time cards, payroll work sheets, time schedules, piece rate tickets, etc.) for at least two years. All other payroll records, collective bargaining agreements, and sales and purchase records must be kept for at least three years. The law requires that these records be accurate and open for inspection by U.S. Department of Labor Wage and Hour Division representatives. These representatives may ask an employer to make extensions, computations, or transcriptions. A list of the specific records to be kept follows:

- Employees' full name and social security number.
- Employees' address, including zip code.
- Birth date, if younger than 19.
- Gender and occupation in which employed.
- Time of day and day of week the employees' work week begins.
- Hours worked each day.
- Total hours worked each work week.
- Basis on which employees' wages are paid (e.g., "\$5 per hour," "\$290 per week," "piece work at 75 cents per unit," etc.)
- Regular hourly pay rate.

- Total daily or weekly straight-time earnings.
- Total overtime earnings for the work week.
- AE additions to and deductions from the employees' wages.
- Total wages paid each pay period.
- Date of payment and pay period covered by the payment.

For more information on this topic, please call our publications mail box at (801) 524-5706 and ask for publication 29 CFR 516.

11. What do I need to know about child labor?

The FLSA prohibits "oppressive child labor." For non-farm jobs, 14 is the minimum age for employment. Minors aged 14 and 15 years may not be employed in processing, production, transportation, or manufacturing, nor may they be employed in any area where these operations are taking place. They may not work before 7: 00 a.m, nor after 7: 00 p.m. except June 1 through Labor Day they may work until 9:00 p.m. They may work no more than three hours on a day when school is in session, and no more than 18 hours in a calendar week when school is in session. Further, they may work no more than 8 hours on a day when school is not in session, and no more than 40 hours in a calendar week when school is not in session.

Once an employee turns 16 years of age, there are no longer any hours or times standards that an employer must observe. Employees 16 years of age and older can be employed at any hour of the day, for any length of time, in any occupation except those declared hazardous. An employee must be at least 18 years of age before they can be employed in any of the occupations listed below:

- Manufacturing or storing of explosives.
- Motor vehicle occupations (drivers, loaders, and helpers).
- Coal mining occupations.
- Logging and saw milling occupations.
- Power-driven woodworking machine occupations.
- Occupations involving exposure to radioactive substances.
- Power-driven hoisting apparatus occupations.
- Power-driven metal forming, punching or shearing machines.
- Occupations in connection with mining.
- Occupations involving slaughtering or meat packing or processing.
- Power-driven bakery machine occupations, including the operation of dough mixers.
- Power-driven paper products machine occupations.
- Occupations involved in the manufacture of brick or tile, etc.
- Occupations involved in the operation of power-driven circular saws, band saws, and guillotine shears.
- Occupations involved in wrecking, demolition, and shipbreaking operations.
- Occupations in roofing operations.
- Occupations in excavation operations.

For additional information on this topic, please call our Publications mail box at (801) 524-5706 and request CL-101. For information on child labor in farm jobs, please request CL-102.

SALARIED EXEMPTION TESTS

Just because someone is paid a salary does not mean he or she is not entitled to additional overtime pay when they work over 40 hours in a week. This statement surprises a lot of people, because it is a common assumption that a legal way to avoid paying overtime is to pay employees on a salary basis. That assumption is incorrect!

There are, however, certain conditions under which you can pay someone a salary and no additional overtime and be in compliance with the law. However, all of these conditions must be clearly met. The burden of establishing proof that a particular employee meets the requirements of an exemption (i.e., meets all the conditions) rests strictly and solely on you as the employer.

The following information has been developed to assist you in determining if exemptions apply to salaried employees, outside salespeople or computer programmers employed by your firm. The forms give brief explanations of particular terms used in the tests, as well as citations where these definitions may be found in the Federal Regulations. To receive a copy of these regulations, please call our publications mailbox at (801) 524-5706, and ask for publication Part 541, Defining the Terms "Executive," "Administrative," "Professional," and "Outside Salesman."

If you have any questions, please feel free to contact our office for assistance at (801)524-5706. These outlines are provided for information purposes only.

EXECUTIVE EXEMPTION

Section 13(a)(1) of the Fair Labor Standards Act (FLSA) grants an exemption from the overtime pay requirements to "any employee employed in a bona fide executive...capacity." Title 29, United States Code of Federal Regulations, Part 541.1 defines what constitutes a "bona fide executive," and sets forth the following criteria

Requirement #1:

The employee must receive a guaranteed salary of at least \$250 per week. The regulations define a salary as a guaranteed amount of compensation that is paid on a weekly or less frequent basis, and is not subject to reduction because of the quantity or quality of work performed. This means that except for a very limited number of reasons (found in 29 CFR 541.118), the salary cannot be reduced by the employer in any pay period. Even if the employee works less than a full week's worth of hours, or if the employer's department produces less than normal, a deduction from the salary cannot be made.

Is the employee paid a guaranteed salary of at least \$250 per week (\$500 bi-weekly, \$541.67 semi-monthly, or \$13,000 annually)?

Requirement #2:

The employee must have management of the enterprise or a customarily recognized department thereof as his/her primary duty. This means the most important duty the employee performs, and usually the one that consumes the majority of the employee's time, must be management. The following types of duties can be classified as management: Planning, scheduling, and prioritizing work and techniques to be used; controlling the flow and distribution of materials, supplies, and merchandise; interviewing, hiring, training, supervising, evaluating, and firing employees; and providing for the safety of employees and the establishment (29 CFR 541.102). If the employee spends the majority of his/her time selling, cleaning, producing goods, filing, repairing equipment and performing the same type of work as is performed by the employees they supervise, they do not have management as their primary duty. These types of working supervisors rarely, if ever, qualify for exempt status. A customarily recognized department means that the employee in question must manage a unit with a permanent status and function (29 CFR 541.104). Therefore, a shift or crew leader who supervised different workers on different days performing different functions would not meet this requirement.

Is the employee's primary duty management?

Requirement #3:

The employee must supervise and direct the work of two full-time employees (or the equivalent). This requirement is met when the employee in question supervises two or more employees whose total hours per week are at least 80. For example, the 80-hour minimum could be met by one 40-hour per week employee and two 20-hour per week employees. You cannot include the employee's own work hours when determining the number of hours supervised each week. Even though the regulations only require that an employee supervise two employees to meet this requirement, when an employee only supervises two others, the employee very rarely has enough management duties to make management the primary duty (as defined in Requirement 42). A ratio that is much more likely to result in management as a primary duty for an employee is ten employees to one supervisor. In addition, the employees supervised must work in the same department as the employee in question. See 29 CFR 541.105.

Does the employee supervise at least two full-time employees or the equivalent?

IF ***ALL THREE*** OF THE PRECEDING REQUIREMENTS WERE ANSWERED "YES," THE EMPLOYEE MAY BE CONSIDERED TO BE EXEMPT AS A "BONA FIDE EXECUTIVE."

ADMINISTRATIVE EXEMPTION

Section 13(a)(1) of the Fair Labor Standards Act (FLSA) grants an exemption from the overtime pay requirements to "any employee employed in a bona fide...administrative...capacity." Title 29, United States Code of Federal Regulations, Part 541.2 defines what constitutes a "bona fide administrative employee," and sets forth the following criteria:

Requirement #1

The employee must receive a guaranteed salary of at least \$250 per week. The regulations define a salary as a guaranteed amount of compensation that is paid on a weekly or less frequent basis, and is not subject to reduction because of the quantity or quality of work performed. This means that except for a very limited number of reasons (found in 29 CFR 541.118), the salary cannot be reduced by the employer in any pay period. Even if the employee works less than a full week's worth of hours, or if the employee's department produces less than normal, a deduction from the salary cannot be made.

Is the employee paid a guaranteed salary of a least \$250 per week (\$500 bi-weekly, \$541.67 semi-monthly, or \$13,000 annually)?

Requirement #2

The employee must have office or non-manual work which is directly related to the management policies or general business operation of the employer or the employer's customers as his/her primary duty. This means that the most important duty the employee performs, and usually the one that consumes the majority of the employee's time, must be office or non-manual in nature and directly related to the management or business operations of the firm. Often, the bona fide administrative employee works as an executive or administrative assistant, usually to the company's owner or a bona fide executive employee (see Executive Exemption test). This type of administrative employee is normally found in large firms or establishments where the official assisted has such wide responsibilities that the employee in question is using judgment and discretion and is not a secretary with a glorified title. Generally, though the administrative employee is a staff employee, functional head or specialist such as a credit manager in a lending institution, a tax, real estate or insurance expert providing advice and counsel to the firm's owner(s) or upper-level manager(s), etc. See 29 CFR 541.201 through 29 CFR 541.206.

Does the employee's primary duty consist of the performance of office or non-manual work directly related to management policies and actions?

Requirement #3:

The employee must customarily and regularly exercise independent judgment and discretion. This means that the employee must have a regular and recurring responsibility to compare and evaluate courses of action, then act or make a decision after considering the various possibilities. The employee must act free of direction or supervision in matters of consequence and significance (29 CFR 541.207). Typically, activities such as advising management, planning, negotiating, and business research and control can be considered exempt work (29 CFR 541.205(b)). Decisions in small matters, or taking necessary actions by following predetermined policies or check lists, are not sufficient for classifying an employee as "bona fide administrative."

Does the employee customarily and regularly exercise independent judgment and discretion in matters of significance?

IF **ALL THREE** OF THE PRECEDING REQUIREMENTS WERE ANSWERED "YES," THE EMPLOYEE MAY BE CONSIDERED TO BE EXEMPT AS A "BONA FIDE ADMINISTRATIVE EMPLOYEE."

PROFESSIONAL EXEMPTION

Section 13(a)(1) of the Fair Labor Standards Act (FLSA) grants an exemption from the overtime pay requirements to "any employee employed in a bona fide...professional capacity." Title 29, United States Code of Federal Regulations, Part 541.3 defines what constitutes a "bona fide professional employee," and sets forth the following criteria (please note: the term "professional" as it is used in the regulations is meant to determine the *type* of work performed by an employee, and does *not* describe the manner in which the employee performs such work):

Requirement #1:

The employee must be paid on a guaranteed salary or fee basis of at least \$250 per week. The regulations define a salary as a guaranteed amount of compensation that is paid on a weekly or less frequent basis, and is not subject to reduction because of quantity or quality of work performed. Except for the limited reasons found in 29 CFR 541.118, the salary cannot be reduced by the employer in any pay period, even if the employee works fewer hours or has lower productivity. Fees are characterized by the payment of an agreed sum for a single job, regardless of the time required for its completion (see 29 CFR 541.313).

Is the employee paid a guaranteed salary or fee of at least \$250 per week (\$500 bi-weekly, \$541.67 semi-monthly, or \$13,000 annually)?

Requirement #2:

The employee's primary duty must consist of either work requiring advanced knowledge in a field of science or learning (characterized by a prolonged course of specialized intellectual study), or work that is original and creative in character in a recognized field of artistic endeavor, or teaching in a school system or educational establishment. This means that the most important duty the employee performs, and usually the one that consumes the majority of the employee's time, must either require a formal, advanced education such as that of doctors, attorneys, engineers, etc. (Degrees or diplomas from technical schools or courses do not qualify). Or, the most important and time consuming duty must be creative, original, and artistic in nature, such as that of professional actors, dancers, and other artists. Or, finally, the most important and time consuming duty may be those required to teach, tutor, instruct, or otherwise impart knowledge. However, an employee who has these types of duties as their primary duties **must** be employed by the school system or an educational establishment. Highly skilled technicians do not qualify for this exemption. See 29 CFR 541.300 through 29 CFR 541.304.

Does the employee's primary duty consist of either the performance of work requiring knowledge in a field of science or learning, or work that is original and creative in a recognized artistic endeavor, or teaching in a school system or educational establishment?

Requirement #3:

The employee's work must require the consistent exercise of discretion and judgement, and must be predominantly intellectual and varied in character. This means that the employee must apply his/her special knowledge or talents to the job duties. Purely mechanical or routine work does not qualify. The employee must also continually exercise a variety of judgments applied to a variety of problems presented and deductions made in order to perform satisfactory work. The work of the true professional is inherently varied, even though similar outward actions may be performed. Highly skilled technicians do not qualify for this exemption. See 29 CFR 541.305 and 29 CFR 541.306.

Does the employee's work require the consistent exercise of discretion and judgement, and is it predominantly intellectual and varied in character?

IF ***ALL THREE*** OF THE PRECEDING REQUIREMENTS WERE ANSWERED "YES," THE EMPLOYEE MAY BE CONSIDERED TO BE EXEMPT AS A "BONA FIDE PROFESSIONAL EMPLOYEE."

**SPECIAL EXEMPTION FOR COMPUTER SYSTEMS ANALYSTS
AND PROGRAMMERS**

Public Law 101-583, enacted November 15, 1990, contains provisions to allow computer analysts to be exempt from overtime, if they are paid on a guaranteed salary basis (as required for the Professional Exemption and 29 CFR 541.118), or if they are paid on other than a salary basis at a rate not less than 6 ½ times the minimum wage (as of 04/01/91, 6 ½ times the minimum wage of \$4.25 an hour would be \$27.63 per hour). To qualify for the exemption, the employee must meet the following criteria:

Requirement #1:

The employee must receive a guaranteed salary of at least \$250 per week, the equivalent thereof, or \$27.63 per hour. The regulations define a salary as a guaranteed amount of compensation that is paid on a weekly or less frequent basis, and is not subject to reduction because of the quantity or quality of work performed. This means that except for a very limited number of reasons (found in 29 CFR 541.118), the salary cannot be reduced by the employer in any pay period. Even if the employee works less than a full weeks worth of hours, or if the employee's department produces less than normal, a deduction from the salary cannot be made.

Is the employee paid a guaranteed salary of a least \$250 per week (\$500 bi-weekly, \$541.67 semi-monthly, or \$13,000 annually) or \$27.63 an hour?

Requirement #2:

The employee must have as his/her primary duty one or more of the following: a) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware and software functional specifications; or b) the design of computer systems based on and related to user specifications; or c) the creation or modification of computer programs based on and related to systems design specifications; or d) the creations or modification of computer

programs related to machine operating systems; or e) a combination of the aforementioned duties, the performance of which requires the same levels of skills. This means that the employee's most important duty, and the one which usually consumes the majority of the employee's time, must consist of computer programming or analysis work which require original creative or analytical work, and many times means the employee in question will start with nothing and design and build an operating system from the ground up. Work which is performed according to predetermined policies or criteria and which does not allow the employee to use their knowledge, skills, and judgement does not usually qualify as exempt work. Data input and data processing and routine technical work such as translating programs or debugging pre-existing programs does not qualify as exempt work, either.

Does the employee have the duties described in a) through e) in the preceding paragraph as their primary duty?

IF **BOTH** OF THE PRECEDING REQUIREMENTS WERE ANSWERED "YES," THE EMPLOYEE MAY BE CONSIDERED TO BE EXEMPT AS A COMPUTER SYSTEMS ANALYST OR PROGRAMMER.

OUTSIDE SALES EXEMPTION

Section 13(a)(1) of the Fair Labor Standards Act (FLSA) grants an exemption from the overtime pay requirements to "any employee employed in a bona fide...capacity of outside salesman." Title 29, United States Code of Federal Regulations, Part 541.5 defines what constitutes a "bona fide outside sales employee," and sets forth the following criteria:

Requirement # 1:

The employee must be customarily and regularly engaged away from the employer's place of business in making sales or obtaining orders or contracts for which a consideration will be paid to the employer by the customer. This means that the employee must regularly spend their time "away from the office" for the purposes of selling the employer's products or services to prospective clients. An employee who stays in a fixed location to sell products or services to customers who come to the employer's premises is considered an "inside salesperson" and does not meet the criteria specified above. Neither does someone who works in their own home. The employee's home then becomes the place of business from which the employee must customarily and regularly be away (see 29 CFR 541.502(b)). Most telemarketing or telephone solicitation is considered inside sales, also, and does not qualify for the exemption. See 29 CFR 541.500 through 29 CFR 541.502.

Is the employee customarily and regularly engaged away from the employer's place of business for the purposes of making sales?

Requirement #2:

Hours spent by the employee in work that does not meet the criteria specified in Requirement #1 can not exceed 20% of the hours worked in the work week by non-exempt employees of the employer. In other words, if a sales employee does non-exempt work that another non-exempt employee also does, the sales employee's time performing this duty can not exceed 20% of the time the

non-sales, non-exempt employee spends doing this duty. For example, if the non-sales, non-exempt employee spends 40 hours per week doing non-exempt work, the sales employee can not spend more than 8 hours in the week doing that non-exempt work without disqualifying his/herself from the exemption (because 8 is 20% of 40). This limitation does not apply, however, to work performed incidental to and in conjunction with the employee's own sales work, such as scheduling appointments or completing sales paperwork. See 29 CFR 541.503.

Is the time spent by the sales employee in non-exempt work less than 20% of the time spent in non-exempt work by non-sales employees?

IF **BOTH** OF THE PRECEDING REQUIREMENTS WERE ANSWERED "YES," THE EMPLOYEE MAY BE CONSIDERED TO BE EXEMPT AS A "BONA FIDE OUTSIDE SALES[PERSON]."