

**APPALACHIAN STATE UNIVERSITY
DEPARTMENT 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 Appalachian State University the Department of Human Resources, Classification and Compensation makes the determination of FLSA status for SPA positions. The determination is based on the nature and the requirement of work performed and is not directly related to job title or salary band.

Additional information and definitions on exemption requirements are available from the [Office of State Personnel website](#).

Position Classification: _____

Human Resources Decision:

Position Number: _____

EXEMPT or NON-EXEMPT

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?		

DUTIES QUESTIONS		
EXECUTIVE EXEMPTION	YES	NO
1. Is the primary duty of the position to manage a customarily recognized department or unit of the University or its major divisions? <ul style="list-style-type: none"> ➤ What functions does the position manage? (i.e. financial, personnel, planning, etc.) ➤ Does the employee set policy, interpret policy, or carry out policy? Explain, give examples. ➤ What is the nature of the public contact? (i.e. internal or external, information conveyed, information received) ➤ Does the employee have freedom of budget control? Explain, give examples. 		
2. Does the position regularly supervise the full time equivalent of two permanent employees? <ul style="list-style-type: none"> ➤ How many staff does the position supervise? ➤ What are the classifications of the direct reports? ➤ What is the degree of supervision required? ➤ What degree of supervision is required for each staff member? 		
3. Does the position have the authority to make personnel decisions such as hiring, terminating, or disciplining?		
<p>Determining Factor(s): “<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. Determination of this exemption will be made by Human Resources.</p>		

ADMINISTRATIVE EXEMPTION	YES	NO
<p>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 University and its customers? NOTE: 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.</p>		
<p>2. Does the position customarily and regularly exercise discretion and independent judgment relative to matters of significance? NOTE: 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 University 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 University on significant matters; whether the employee is involved in planning business objectives.</p> <p>➤ Please list out 5 different examples of decisions that the position is required to make with significant independent judgment:</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5. 		

LEARNED PROFESSIONAL EXEMPTION	YES	NO
<p>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? NOTE: “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).</p> <p>➤ Please list out 5 different examples of work responsibilities that require “advanced knowledge” as described above:</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5. 		

COMPUTER EXEMPTION	YES	NO
<p>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?</p> <p>➤ Please list some examples of the type of manipulation, analysis, or alterations the position has made for ASU systems within the past 12 months:</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 		
<p>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?</p> <p>➤ Please describe the “innovative” projects, functionalities, and/or capabilities created/contributed/ or problem solved for in whole or in part by this position within the past 12 months:</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 		
<p>3. Is the employee compensated <i>either</i> on a salary or fee basis at a rate not less than \$455 per week <i>or</i>, if compensated on an hourly basis, at a rate not less than \$27.63 an hour?</p>		
<p>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. Determination of this exemption will be made by Human Resources.</p>		

Direct Manager/Supervisor Signature: _____

Date: _____

Human Resources, Classification and Compensation Review: _____

ANALYST’S COMMENTS: