

**Appalachian State University**  
**New Guidelines Regarding the Fair Labor Standards Act (FLSA)**  
**effective August 23, 2004**

**LEARNED PROFESSIONAL EXEMPTION**

To qualify for the learned professional exemption, all of the following tests must be met:

1. The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week;
2. The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
3. The advanced knowledge must be in a field of science or learning; and
4. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

**TERMS DEFINED:**

**Salary Basis-** Being paid on a "salary" basis means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked.

**Work Requiring Advanced Knowledge-** Professional work is distinguished from work involving routine mental, manual, mechanical or physical work. A professional employee generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

**Discretion and Independent Judgment-** In general, the exercise of discretion and judgment involves the comparison and the evaluation of possible course of conduct and acting or making a decision after the various possibilities have been considered. The term must be applied in the light of all the facts involved in the employee's particular employment situation, and implies that the employee has authority to make an independent choice, free from immediate direction or supervision.

**Field of Science or Learning-** Fields of science or learning include law, medicine, theology, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other occupations that have a recognized professional status and are distinguishable from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type, but is not in a field of science or learning.

**Customarily Acquired by a Prolonged Course of Specialized Intellectual Instruction-** The learned professional exemption is restricted to professions where specialized academic training is a standard prerequisite for entrance into the profession (e.g., an Engineering degree is required to be an Engineer). However, the word "customarily" means the exemption may be available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the

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advanced knowledge through a combination of work experience and intellectual instruction. This exemption does not apply to occupations in which most employees acquire their skill by experience rather than by advanced specialized intellectual instruction.

**FACTORS TO CONSIDER FOR DETERMINING  
LEARNED PROFESSIONAL EXEMPTION**

1. Advanced knowledge cannot be attained at the high school level. For example, many jobs where the minimum requirements do not require a specific college or university degree but rather a high school degree and relevant experience such as Administrative Assistant or Computer Production Specialist would not be exempt under the Learned Professional category.
2. The learned professional exemption is not available for occupations that may be performed with:
  - Only the general knowledge acquired by an academic degree in any field
  - Knowledge acquired through an apprenticeship
  - Training in the performance of routine mental, manual, mechanical or physical processes
3. The exemption also does not apply to occupations in which most employees acquire skill by experience. However, a combination of intellectual instruction and work experience can substitute. For example, Registered Nurses are considered exempt as a learned professional and can be acquired through a four year college degree in Nursing or with an Associate degree which is not to be confused with a Licensed Practical Nurse which is non-exempt.
4. When employees spend less than majority of his/her time pursuing the profession, the exemption may still be met in view of:
  - The relative importance of the professional duties as opposed to the other types of duties;
  - The frequency with which the employee exercises discretionary powers;
  - The employee's relative freedom from supervision and
  - The relationship between the employee's salary and the wages paid to other employees who perform the same kind of non-exempt work performed by the employee.