



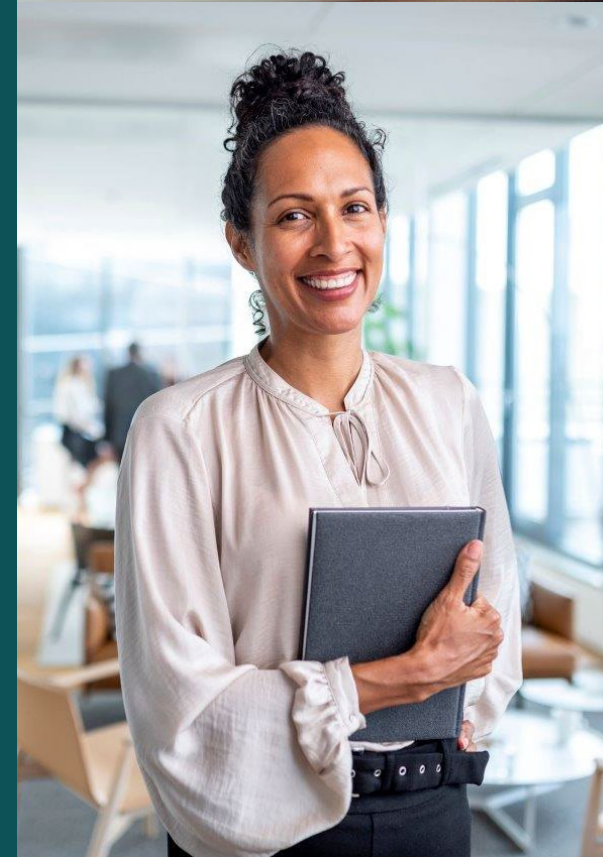
YEO & YEO WEBINAR

# Unlocking Compliance: Mastering DOL's Final Overtime Rules Through Job Duties Analysis

**Christine Porras, CPP**  
YEO & YEO

**Mildred Kress**  
U.S. DEPARTMENT OF LABOR

**JUNE 12, 2024**



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# Meet Your Presenters



YEO & YEO

## **Christine Porras, CPP**

Payroll Supervisor  
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Christine leads Yeo & Yeo's Payroll Services Group. She has been with the firm for over 20 years, providing clients with comprehensive payroll solutions. With her vast expertise, Christine serves on the Board of Advisors for PayrollOrg, and was co-founder and past President of the Great Lakes Bay Payroll Professionals group, now serving as a current member.



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## **Roselynn Sharman**

Outsourced Business Operations  
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Roselynn is Yeo & Yeo's Outsourced Business Operations Manager, specializing in business advisory services, outsourced accounting, and payroll tax reporting. She is a member of the Valley Society of Human Resource Management and serves as board treasurer for Major Chords for Minors and the Lutheran Women's Missionary League at St. Lorenz Lutheran Church.



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## **Mildred Kress**

Community Outreach &  
Resource Planning Specialist  
DOL Wage & Hour Division

Mildred has been in the CORPS position for 10 years and with the DOL for a total of 18 years. She works in the Detroit District Office. As the CORPS, she is responsible for building relationships with community stakeholders to educate workers, employers and associations on federal labor laws.

# Key Topics That Will Be Covered

- Overview of FLSA three tests for exemption – salary level, salary basis, job duties
- Discussion of new minimum salary levels and their effective dates (salary level)
- Utilizing nondiscretionary payments to meet salary thresholds
- Clarification on what it means to be “paid” on a salary basis
- Review of executive, administrative, and professional exemptions, including learned and creative professionals (job duties)
- Insights on the Highly Compensated Employees (HCE) test

# Preparing for the Impact

## ACTIONS TO TAKE

- Review your pay practices for compliance
- Work through your decision tree for reclassifying employees
  - How much to pay, regular rate calculations, how to track non-exempt employees work time, incentive and bonus pay, etc.
- Ensure exempt employees meet the duties test
- Review highly compensated employees
- Review commission paid salary employees

## WE ARE HERE TO HELP

- Conduct a wage & hour audit to ensure compliance
- Analyze financial impact of reclassifying employees
- Analyze exempt employees to determine they meet the duties test
- Update job descriptions
- Implement timeclock systems
- Create a plan to notify employees who are moving from salary to hourly

# Welcome Mildred Kress



# FAIR LABOR STANDARDS ACT EXECUTIVE, ADMINISTRATIVE AND PROFESSIONAL EXEMPTIONS



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# FAIR LABOR STANDARDS ACT



Federal Minimum Wage: \$7.25/hour



Overtime: 1 ½ times the regular rate of pay for all hours over 40 hours in a work week



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# “WHITE COLLAR” EXEMPTIONS



Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees who are employed in a bona fide:

- [Executive](#);
- [Administrative](#);
- [Professional](#); or
- [Outside Sales](#) capacity



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# CERTAIN COMPUTER EMPLOYEES



Certain computer employees may be exempt professionals under Section 13(a)(1) or exempt under Section 13(a)(17) of the FLSA.

Exemption for [certain computer employees](#)



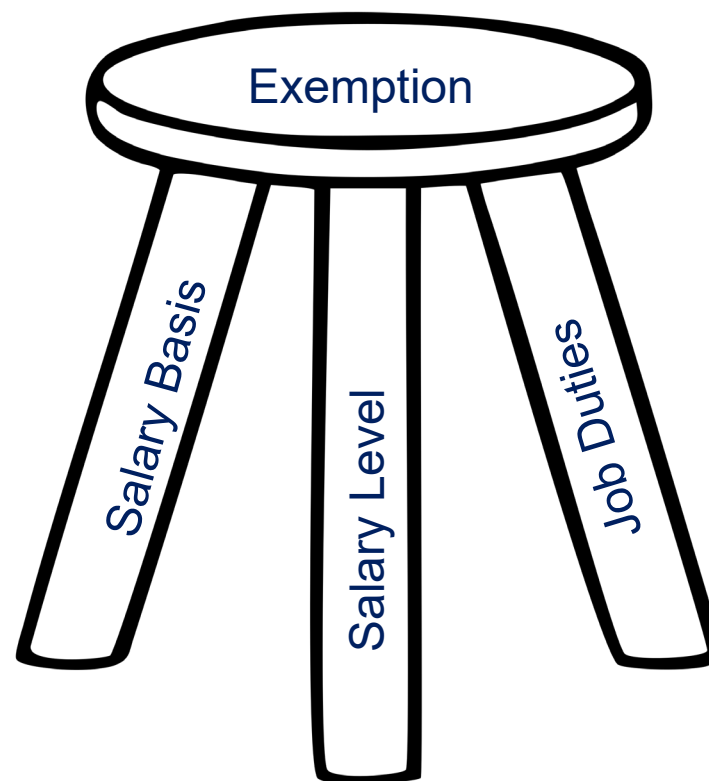
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# THREE TESTS FOR EXEMPTION

- Salary Level
- Salary Basis
- Job Duties



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# MINIMUM SALARY LEVEL: \$684



For most employees, the minimum salary level required for exemption is \$684 per week

- Must be paid “free and clear”
- The \$684 per week may be paid in equivalent amounts for periods longer than one week:
  - **Biweekly:**           **\$1,368**
  - **Semimonthly:**   **\$1,482**
  - **Monthly:**           **\$2,964**



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# HIGHLY COMPENSATED EMPLOYEES (HCE) TEST

- Total annual compensation of at least \$107,432
- At least \$684 per week paid on a salary or fee basis
  - *The HCE test does not allow employers to credit nondiscretionary bonuses, commissions, or incentive payments towards the \$684 weekly requirement.*
- Perform office or non-manual work
- Customarily and regularly perform any one or more of the exempt duties identified in the standard tests for the executive, administrative or professional exemptions



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# Final Rule: Restoring and Extending Overtime Protections

DATE	STANDARD SALARY LEVEL	HIGHLY COMPENSATED EMPLOYEE TOTAL ANNUAL COMPENSATION THRESHOLD
Before July 1, 2024	\$684 per week (equivalent to \$35,568 per year)	\$107,432 per year, including at least \$684 per week paid on a salary or fee basis.
July 1, 2024	\$844 per week (equivalent to \$43,888 per year)	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis.
January 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis.
July 1, 2027, and every 3 years thereafter	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.



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# NONDISCRETIONARY BONUSES AND INCENTIVE PAYMENTS

Nondiscretionary bonuses and incentive payments (including commissions) are forms of compensation promised in advance to employees (e.g., bonuses for meeting set production goals, retention bonuses, and commission payments based on a fixed formula).

May be used to satisfy up to 10% of the standard salary and special salary levels.

- Minimum of 90% of salary level (approx. \$616) must be paid as a weekly salary.

Bonuses must be paid on an annual or more frequent basis.



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# CATCH-UP PAYMENTS

If an employee does not earn enough from the nondiscretionary bonus, commission, or incentive payments in a given year to meet the standard salary level in the 52-week period – an employer may make a “catch-up” payment within one pay period of the end of the 52-week period.

Any such “catch-up” payment will count only toward the prior 52-weeks salary amount and not toward the salary amount during the period in which it is paid.



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# OFFICE OR NON-MANUAL WORK

- The highly compensated test is not available for
  - Non-management production line workers
  - Non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers
  - Other employees who perform work involving repetitive operations with their hands, physical skill and energy



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# SALARY BASIS TEST



- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- Need not be paid for any workweek when no work is performed



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# DEDUCTIONS FROM SALARY

- An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the businesses
- If the employee is ready, willing and able to work, deductions may not be made for time when work is not available



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# EFFECT OF IMPROPER DEDUCTIONS

- An actual practice of making improper deductions from salary will result in the loss of the exemption:
  - During the time period in which improper deductions were made
  - For employees in the same job classifications
  - Working for the same managers responsible for the actual improper deductions
- Isolated or inadvertent improper deductions, however, will not result in the loss of exempt status if the employer reimburses the employee



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# NO SALARY REQUIREMENTS

The salary level and salary basis tests do not apply to

- Outside Sales Employees
- Doctors
- Lawyers
- Teachers
- Certain computer-related occupations paid at least \$27.63 per hour



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# PRIMARY DUTY

- Employees who spend more than 50% of their time performing exempt work will generally satisfy the primary duty requirement
- However, the regulations do not ***require*** that exempt employees spend more than 50% of time performing exempt work



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# EXECUTIVE DUTIES

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision;
- Customarily and regularly directs the work of two or more other employees; and
- Authority to hire or fire other employees or whose suggestions and recommendations as to hiring, firing, advancement, promotion or other change of status of other employees are given particular weight



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# MANAGEMENT DUTIES

- Interviewing, selecting, and training employees
- Setting and adjusting pay and work hours
- Maintaining production or sales records
- Appraising employee productivity and efficiency
- Handling employee complaints and grievances
- Disciplining employees
- Planning and apportioning work among employees



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# MANAGEMENT

- Determining the techniques to be used; the type of materials, supplies, machinery, equipment or tools to be used; or the merchandise to be bought, stocked and sold
- Providing for the safety and security of employees or property
- Planning and controlling the budget
- Monitoring or implementing legal compliance measures



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# DEPARTMENT OR SUBDIVISION

A “customarily recognized department or subdivision” must have a permanent status and continuing function

- Need not be physically within the employer’s establishment, and may move from place to place
- Continuity of the same subordinate personnel is not essential to the existence of a recognized unit.
- The employee in charge of each branch establishment is in charge of a recognized subdivision
- Does not include a mere collection of employees assigned from time to time to a specific job



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# 20% OWNER EXECUTIVES

The executive exemption also includes employees who:

- own at least a bona fide 20-percent equity interest in the enterprise; and
- are actively engaged in management of the enterprise.

The salary level and salary basis requirements do not apply to 20% owner executives.



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# ADMINISTRATIVE DUTIES

- Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.



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# MANAGEMENT OR GENERAL BUSINESS OPERATIONS

- Refers to the type of work performed by the employee
- Work must be directly related to assisting with the running or servicing of the business
- Does not include working on a manufacturing production line or selling a product in a retail or service establishment



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# MANAGEMENT OR GENERAL BUSINESS OPERATIONS EXAMPLES

- Tax
- Finance
- Accounting
- Budgeting
- Auditing
- Insurance
- Quality Control
- Purchasing
- Procurement
- Advertising
- Marketing
- Research
- Safety and Health
- Human Resources
- Employee Benefits
- Labor Relations
- Public and Government Relations
- Legal and Regulatory Compliance
- Computer Network, Internet and Database Administration

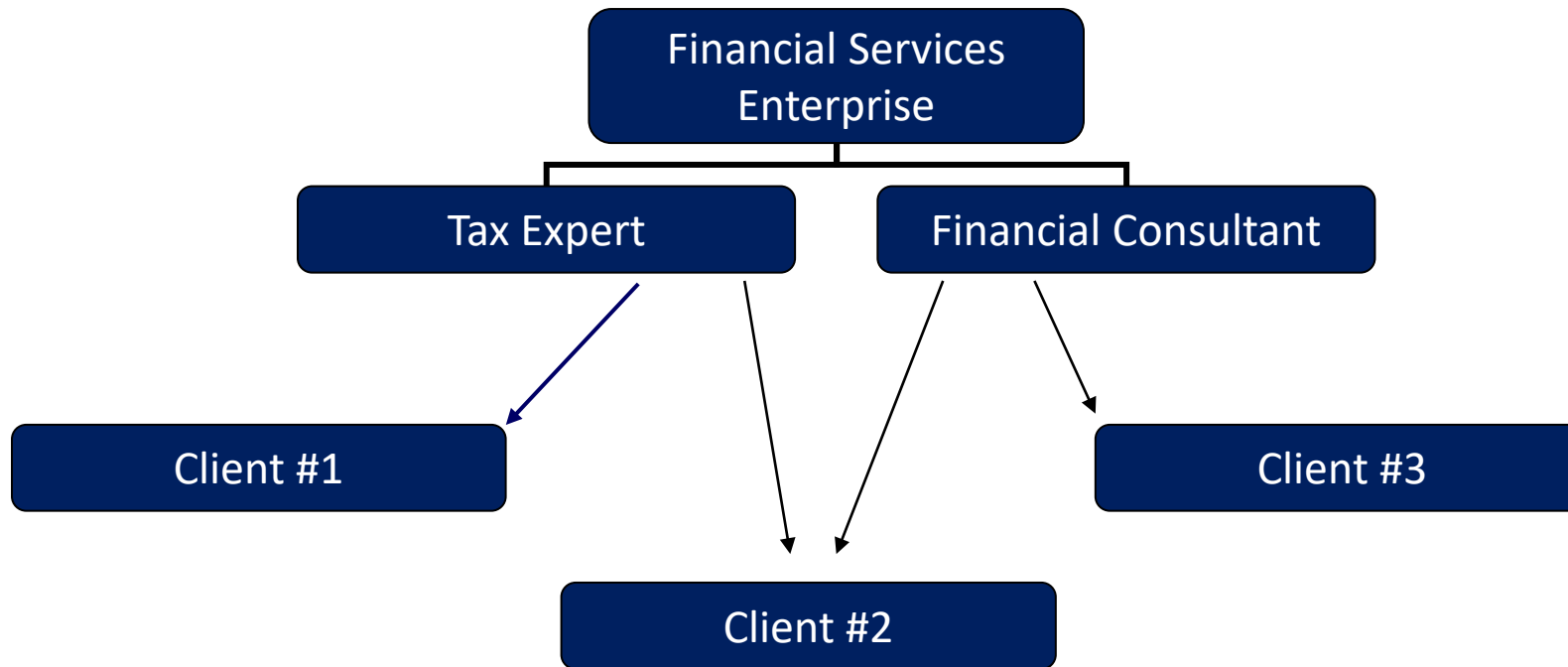


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# EMPLOYERS CUSTOMERS

Employees acting as advisors or consultants to clients or customers



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# DISCRETION AND INDEPENDENT JUDGMENT

- The comparison and evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered
- Must be exercised with respect to “matters of significance,” which refers to the level of importance or consequence of the work performed
- Decisions and recommendations may be reviewed at a higher level and, upon occasion, revised or reversed



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# DISCRETION AND INDEPENDENT JUDGMENT FACTORS

Factors include, but are not limited to:

- 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, even if the employee's assignments are related to operation of a particular segment of the business



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# DISCRETION AND INDEPENDENT JUDGMENT: ADDITIONAL FACTORS

- Factors include, but are not limited to:
  - Whether the employee has authority to commit the employer in matters that have significant financial impact
  - Whether the employee has authority to waive or deviate from established policies and procedures without prior approval
  - Whether the employee has authority to negotiate and bind the company on significant matters
  - Whether the employee provides consultation or expert advice to management



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# DISCRETION AND INDEPENDENT JUDGMENT: DOES NOT INCLUDE

Discretion and independent judgment ***does not*** include:

- Applying well-established techniques, procedures or specific standards described in manuals or other sources
- Clerical or secretarial work
- Recording or tabulating data
- Performing mechanical, repetitive, recurrent or routine work



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# USE OF MANUALS

Exempt employees may use manuals, guidelines or other established procedures if they:

- contain or relate to highly technical, scientific, legal, financial or other similarly complex matters
- that can be understood or interpreted only by those with advanced or specialized knowledge or skills

Employees are not exempt if they use manuals to apply well-established techniques or procedures within closely prescribed limits



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# FINANCIAL SERVICES

Financial services employees may meet the duties requirements for the administrative exemption

An employee whose primary duty is selling financial products does not qualify for the administrative exemption



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# HUMAN RESOURCES

- Human resource managers who formulate, interpret or implement employment policies generally meet the administrative duties requirements
- Personnel clerks who “screen” applicants to obtain data regarding minimum qualifications and fitness for employment generally are not exempt administrative employees



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# OTHER EXEMPT POSITIONS

- An employee who leads a team of other employees assigned to complete major projects
- Executive assistant or administrative assistant to a business owner or senior executive of a large business who has been delegated authority regarding matters of significance
- Management consultants who study the operations of a business and propose changes in organization



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# NON-EXEMPT POSITIONS

- Ordinary inspection work involving well-established techniques and procedures
- Examiners and graders who perform work involving comparison of products with established standards
- Comparison shoppers who merely report the prices at a competitor's store
- Public sector inspectors or investigators



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# PROFESSIONAL EXEMPTION LEARNED PROFESSIONAL

- The employee's primary duty must be the performance of work requiring advanced knowledge
- In a field of science or learning
- Customarily acquired by a prolonged course of specialized intellectual instruction



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# ADVANCED KNOWLEDGE

- Predominantly intellectual in character
- Includes work requiring the consistent exercise of discretion and judgment
- The advanced knowledge is generally used to analyze, interpret or make deductions from varying facts or circumstances
- **Not** work involving routine mental, manual, mechanical, or physical work
- **Cannot** be attained at the high school level



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# FIELD OF SCIENCE OR LEARNING



Occupations with recognized professional status, as distinguished from the mechanical arts or skilled trades



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# PROLONGED COURSE OF SPECIALIZED INTELLECTUAL INSTRUCTION



- Specialized academic training is a prerequisite for entering the profession
- Best evidence that an employee meets this requirement is possession of the appropriate academic degree



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# PROLONGED COURSE OF SPECIALIZED INTELLECTUAL INSTRUCTION IS NOT:

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

The exemption also **does not** apply to occupations in which most employees acquire skill by experience



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# DOCTORS



The learned professional exemption applies to any employee who holds a valid license or certificate permitting the practice of medicine

- Osteopathic physicians
- Podiatrists
- Dentists
- Optometrists

The exemption is also available to an employee who holds the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program



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# NURSES



Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption

Licensed practical nurses generally ***do not*** qualify as exempt learned professionals



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# OTHER MEDICAL PROFESSIONS

- Registered or certified medical technologists
  - 3 years of pre-professional study in an accredited college or university, plus 1 year of professional study in an accredited school of medical technology
- Dental hygienists
  - 4 years of pre-professional and professional study in an accredited college or university
- Certified physician assistants
  - 4 years of pre-professional and professional study, including graduation from an accredited physician assistant program



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# OTHER EXEMPT PROFESSIONS

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Chefs
- Athletic trainers
- Licensed funeral directors or embalmers



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# OTHER NONEXEMPT PROFESSIONS

- Accounting clerks and bookkeepers who normally perform a great deal of routine work
- Cooks who perform predominantly routine mental, manual, mechanical or physical work
- Paralegals and legal assistants
- Engineering technicians



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# CREATIVE PROFESSIONAL DUTIES

The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor



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# RECOGNIZED FIELD OF ARTISTIC OR CREATIVE ENDEAVOR

- Music
  - Musicians, composers, conductors, soloists
- Writing
  - Essayists, novelists, short-story writers, play writers
  - Screen play writers who choose their own subjects
  - Responsible writing positions in advertising agencies
- Acting
- Graphic Arts
  - Painters, photographers, cartoonists



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# FOR MORE INFORMATION

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## **Call or visit the nearest WHD Office**

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- The WHD toll-free information and helpline at: 1-866-4US-WAGE (1-866-487-9243)



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# Questions?

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