

Professional Employee Overtime Exemption Frequently Asked Questions (FAQ)

Both federal law (Fair Labor Standards Act or FLSA) and state law (New York Minimum Wage Act and applicable regulations) generally require the payment of overtime wages for work performed after 40 hours per week. The FLSA and the State Minimum Wage Act exempt employees working in a bona fide professional capacity from the overtime pay requirements. If the criteria of the New York State exception match those in the FLSA, this Department usually applies the criteria consistently with the FLSA, its regulations, and interpretations issued by the U.S. Department of Labor.

To qualify for the Professional employee exemption, the job must meet these two requirements:

The employee's primary duty consists of the performance of work that:

- Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from
 - A general academic education
 - An apprenticeship
 - Training in the performance of routine mental, manual, or physical processes

or
- Is original and creative in a recognized field of artistic endeavor, and produces a result that depends primarily on the invention, imagination, or talent of the employee

The employee's work:

- Requires the consistent exercise of discretion and judgment in its performance
- Is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work)
- Is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time

What does "primary duty" mean?

"Primary duty" has been interpreted to mean the principal, main, major, or most important duty that the employee performs. A determination of an employee's primary duty on all the facts in each case, with the major emphasis on the overall character of the employee's job.

What does "exercise of discretion and judgment" mean?

In general, the exercise of discretion and judgment involves both of the following:

- The comparison and evaluation of possible courses of conduct
- Acting or making a decision after considering the possibilities

In general, such an employee must have the authority to make an independent choice, free from immediate direction or supervision. Factors to consider include (but are not limited to):

- Does the employee formulate, affect, interpret, or implement policies or practices?
- Does the employee carry out major assignments in conducting the business?
- Does the employee's work affect business operations to a substantial degree?
- Can the employee commit the employer in matters that have significant financial impact?
- Does the employee have authority to waive or deviate from established policies and procedures without prior approval?

If an employee's decisions are revised or reversed after review, it does not mean that the employee is not exercising discretion and independent judgment. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.

What is a "field of science or learning"?

Fields of science or learning include:

- Law
- Medicine
- Theology
- Accounting
- Actuarial computation
- Engineering
- Architecture
- Teaching
- Various types of physical, chemical, and biological sciences
- Pharmacy
- 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.

What is a "prolonged course" of instruction?

The best evidence of meeting this requirement is having the appropriate academic degree for entry into the profession, typically acquired at the college level. However, the word "customarily" in the regulation permits other employees in such professions to meet this requirement if they meet all of the following requirements:

- Attained advanced knowledge through a combination of work experience and intellectual instruction

- Have substantially the same knowledge level as other employees who have acquired an academic degree
- Perform substantially the same work as those employees

What is a “recognized field of artistic endeavor”?

A recognized field of artistic endeavor is a field of work where the results cannot be produced by a person endowed with general manual or intellectual ability and training, but which depend primarily on the invention, imagination, or talent of the employee.