

# FLSA – DUTIES TEST



Human Resource Services

# Exemption/Duties Test

## Types of Duties/Exemption Test

- ❖ Executive Exemption Test
  - ❖ Professional “Learned” Exemption Test
  - ❖ Professional “Creative” Exemption Test
  - ❖ Administrative Exemption Test
  - ❖ Outside Sales Exemption Test
  - ❖ Computer worker Exemption Test
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- ❖ Based on primary job duties, not job title
  - ❖ most important duties that account for 50% of time spent working
  - ❖ Paid on a salaried basis for the job, not the number of hours worked

# EXECUTIVE TEST

- ❖ Primarily manages a division, department or subdivision; *and*
- ❖ Directs the work of two or more full-time employees
- ❖ Must have the authority or influence over the hiring, firing, promotion, demotion, discipline and recommendation to change employee status.

## **Sample Jobs**

Vice President, AVP, Director, Assoc/Asst Director, some departmental managers.

# PROFESSIONAL TEST...learned

- ❖ Must perform work requiring advanced knowledge in a field of science or learning; and
- ❖ The advance knowledge must be customarily acquired by a prolonged course of study/specialized instruction.
- ❖ Predominantly intellectual

## **Sample Jobs**

Physician, Nurse Practitioner, Architect, Lawyer, Engineers, Athletic Trainers (certified), Clinical Social Worker, Chefs (4-yr degree program)

# PROFESSIONAL TEST... creative

- ❖ Primary duty must be the performance of work requiring invention, imagination, originality, or talent
- ❖ Performs work in a recognized field of artistic or creative endeavor

## **Sample Jobs**

Musicians, Composers, Actors, Painters, Writers

# ADMINISTRATIVE TEST

- ❖ Primary duty must be office or non-manual work;  
*and*
- ❖ Directly related to management or general business operations of the employer or employer's customers;  
*and*
- ❖ Customarily and regularly requires the exercise of discretion and independent judgment with respect to matters of significance

## Sample Jobs

Grants Specialist, HR Generalist, Internal Auditor, Budget Analyst, Accountant, Resident Directors, Admissions counselors, some supervisors

# OUTSIDE SALES TEST

- ❖ The employee's primary duty must be making sales (as defined in the FLSA, see DOL fact sheet 17F), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- ❖ The employee must be customarily and regularly engaged away from the employer's place or places of business.

## **Sample Jobs**

Door to Door sales, commission based sales offsite

# COMPUTER PROFESSIONAL TEST

- ❖ Employed as a computer systems analyst, programmer, software engineer or similar skilled worker
- ❖ **Primary duties consist of:**
  - ❖ Applications of systems analysis techniques or
  - ❖ Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs
  - ❖ Design, documentation, testing, creation, or modification of computer programs related to machine operating systems



# NEXT STEPS

If you believe that your employee meets the “duties test” and you want to explore option of making them an exempt employee. You will need to take the following steps:

1. Complete the [Request for Exempt Employment Status Packet](#).
2. Get budgetary approval to ensure salary is at or about \$58,656.
3. [Weighing your Options Chart](#).