

**A PRIMER ON MINIMUM WAGE  
AND OVERTIME EXEMPTIONS  
UNDER THE FAIR LABOR STANDARDS ACT**

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The Fair Labor Standards Act contains numerous specific exemptions to its minimum wage and overtime requirements. This paper presents an overview of most of those exemptions, with the goal of providing management with a useful reference tool. Such a tool is useful because proper application of FLSA exemptions can result in substantial labor cost savings to employers.

The FLSA, however, is an extremely complex law. What an exemption will mean in any particular setting will depend upon the then-current interpretations of the exemption by the Department of Labor and the courts. Moreover, misapplication of an exemption can result in Department of Labor investigations, costly court battles, and substantial liability for wages, liquidated damages, and litigation expenses. Therefore, the information provided in this paper should be treated as a starting point, and should be supplemented by advice from qualified human resource professionals and legal counsel.

***AN IMPORTANT CAVEAT:*** On March 13, 2014, President Obama issues a Presidential Memorandum directing the US Department of Labor to “modernize and streamline” the regulations governing the white collar exemptions. DOL was expected to issue proposed regulations making these changes In November 2014, but did not. DOL indicated the new regulations should be expected in February 2015, but again they were not. It is not known when the proposed regulatory changes will be issued, but it probably is safe to expect them within the next few months. The new regulations much change a little or a lot of what is said below about the white collar exemption.

**A. WHITE COLLAR EXEMPTIONS**

**1. Executive Employees**

Under FLSA section 13(a)(1) a person employed in a bona fide executive capacity is exempt from the minimum wage and overtime requirements of the FLSA. To qualify as an executive employee, a worker must meet all of the following four requirements.

*a. First Requirement - Salary Basis*

The employee must be compensated on a salary basis at a rate not less than \$455 per week.

*b. Second Requirement - Primary Duty*

Second, the employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise.

Understanding this test requires understanding he key concepts used in it.

The employee's "primary duty" is the principal, main, major or most important duty the employee performs, and is based on all the facts with the emphasis being on the character of the employee's job as a whole. (DOL Wage Hour Division.)

"Management" includes activities such as interviewing, selecting, and training employees, setting and adjusting rates of pay and hours of work, directing their work, maintaining production or sales records for use in supervision or control, appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status, handling employee complaints and grievances, disciplining employees, planning their work, determining the techniques they will use, assigning work among employees, determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold, controlling the flow and distribution of materials or merchandise and supplies, providing for the safety and security of the employees or the property, planning and controlling the budget, and monitoring or implementing legal compliance measures. (DOL Wage Hour Division.)

"A customarily recognized department or subdivision" is a description used to distinguish a department or subdivision from a collection of employees assigned from time to time to a specific job or a unit without a permanent status and function. (DOL Wage Hour Division.)

*c. Third Requirement - Direction*

Third, the employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent.

The phrase “customarily and regularly” means greater than occasional but less than constant. It includes work normally done every workweek, but does not include isolated or one-time tasks. (DOL Wage Hour Division.)

“Two or more full-time employees or their equivalent” is best understood by example. One full-time and two half-time employees are equivalent to two full-time employees. A department with five full-time nonexempt employees may have up to two exempt supervisors if each supervisor directs the work of two of the nonexempt employees. (DOL Wage Hour Division.)

*d. Fourth Requirement - Hiring and Firing*

Fourth, the employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations concerning hiring, firing, advancement, promotion or any other change of status of employees must be given particular weight.

Whether an employee’s recommendations are given “particular weight” includes, for example, whether the employee’s job includes making such recommendations, how frequently the employee makes such recommendations, and how often those recommendations are relied upon. An executive’s recommendations must pertain to employees who are customarily and regularly directed by the executive. (DOL Wage Hour Division.)

### *Special Rule for Business Owners*

An employee who owns an equity interest of at least twenty percent in the business and who is actively engaged in its management will be deemed an exempt executive.

## **2. Administrative Employees**

Under FLSA section 13(a)(1) a person employed in a bona fide administrative capacity also are exempt from the minimum wage and overtime requirements of the FLSA. To qualify as an administrative employee, the employee must meet all of the following requirements.

### *a. First Requirement - Salary or Fee Basis*

First, the employee must be compensated on a salary or fee basis at a rate not less than \$455 per week.

### *b. Second Requirement - Primary Duty*

Second, the employee's primary duty must be 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.

In regard to determining an employee's primary duty, please see discussion above concerning executive employees.

To be performing work "directly related to management or general business operations," the employee must be performing work directly related to assisting with running a business as compared to working on a production line or selling a product. Work "directly related to management or general business operations" includes, for

example, work in tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety, health, personnel management, human resources, employee benefits, labor relations, public relations, government relations, computer network administration, and legal compliance. (DOL Wage Hour Division.) An exempt employee can perform these types of activities for either the employer or the employer's customers. (DOL Wage Hour Division.)

*c. Third Requirement - Discretion and Independent Judgment*

Third, the employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

In regard to determining an employee's primary duty, please see discussion above concerning executive employees.

The Wage Hour Division provides the following summary of this requirement:

“In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses 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. Factors to consider 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; 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, and other factors set forth in the regulation. The fact that an employee's decisions are revised or reversed after review 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.” (DOL Wage Hour Division.)

“Matters of significance” refers to the level of importance or consequence of the work performed. However, a matter is not a matter of significance merely because the employer would experience a financial loss if the employee failed to perform the job properly. (DOL Wage Hour Division.)

### ***3. Administrative Employees in Educational Establishments***

Slightly different rules apply to administrative employees in educational institutions.

#### ***a. First Requirement - Salary or Fee Basis***

Such employees must be paid on a salary or fee basis at a rate not less than \$455 a week, or on a salary basis which is at least equal to the entrance salary for teachers in the same educational establishment.

#### ***b. Second Requirement - Primary Duty***

The employee's primary duty must be performing administrative functions directly related to academic instruction or training in an educational establishment.

In regard to determining an employee's primary duty, please see discussion above concerning executive employees.

Employees engaged in academic administrative functions include, for example, the superintendent of a school system; assistants to the superintendent responsible for administration of curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; and the principal and vice-principals responsible for the operation of specific school, college department heads, and academic counselors. (DOL Wage Hour Division.)

*c. No Separate Requirement for Discretion and Independent Judgment*

Unlike other administrative employees, school administrative employees are not required to meet a separate requirement for discretion and independent judgment. This is so because "having a primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment includes, by its very nature, exercising discretion and independent judgment with respect to matters of significance." (DOL Wage Hour Division.)

**4. Learned Professionals**

Under FLSA section 13(a)(1) "a person employed in a bona fide professional capacity" is exempt from the minimum wage and overtime requirements of the FLSA. The Department of Labor's regulations distinguish between two types of professional employees: "learned professionals" and "creative professionals." To be a learned professional, the employee must meet all the following requirements.

*a. First Requirement - Salary or Fee Basis*

First, the employee must be compensated on a salary or fee basis at a rate not less than \$455 per week.

*b. Second Requirement - Work Requiring Advanced Knowledge*

Second, 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.

*c. Third Requirement - Field of Science or Learning*

Third, the advanced knowledge must be in 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 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." (DOL Wage Hour Division.)

*d. Fourth Requirement - Prolonged Course of Instruction*

Fourth, the advanced knowledge must be 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. The best evidence of meeting this requirement is having the appropriate academic degree.

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 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.” (DOL Wage Hour Division.)

**5. *Creative Professionals***

**a. *First Requirement - Salary or Fee Basis***

To be a creative professional, the employee must be compensated on a salary or fee basis at a rate not less than \$455 per week.

**b. *Second Requirement - Primary Duty***

The second requirement is that 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. “This requirement distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy. Exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee. Whether the exemption applies, therefore, must be determined on a case-by-case basis. The requirements are generally met by actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, novelists, and others as set forth in the regulations. Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality or talent. Journalists are not

exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product.” (DOL Wage Hour Division.)

## **6. Computer Employees**

FLSA section 13(a)(17) provides an exemption to its minimum wage and overtime requirements for employees generally referred as “computer employees.”

### *a. First Requirement - Salary or Fee Basis, or \$27.63 Hourly*

To be qualify for this exemption, the employee must be compensated either on a salary or fee basis at a rate not less than \$455 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour.

### *b. Second Requirement - Skilled Worker in the Computer Field*

The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field.

### *c. Third Requirement - Primary Duty*

The employee’s primary duty must consist of: (a) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications, (b) the design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications, (c) the design, documentation, testing, creation or modification of computer programs related to machine operating systems, (d) a combination of the preceding duties requiring the same level of skill.

*Exemption Not Applicable to Every Employee Who Works with Computers.* The Wage Hour Division succinctly explains: “The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt under the computer employee exemption.”

## **7. Outside Sales Employees**

Under FLSA section 13(a)(1), an employee employed “in the capacity of outside salesman” is exempt from the FLSA minimum wage and overtime requirements. To be an “outside salesman” the employee’s primary duty must be making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the customer, and the employee must be customarily and regularly perform those duties away from the employer’s place of business.

### *a. No Compensation Threshold*

Unlike the other white collar exemptions, the outside sales exemption does not set a minimum compensation threshold.

### *b. Sales Must Be Made Away From the Employer’s Business*

An outside sales employee makes sales at, for example, the customer’s place of business, the customer’s home, or at trade shows.

*c. Sales Must Be Made in Person*

Outside sales do not include sales made by mail, telephone or the Internet.

However, use of mail, telephone and internet may be used by an outside salesman if only incidental to personal sales calls.

*d. All Fixed Sites are Deemed Part of Employer's Office*

The Wage Hour Division treats any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales as being one of the employer's places of business. (DOL Wage Hour Division.)

**8. Highly Compensated Employees**

Employees performing office or non-manual work who are paid total annual compensation of at least \$100,00, and at least \$455 per week on a salary or fee basis, are exempt from the FLSA minimum wage and overtime provisions if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee. (DOL Wage Hour Division.)

**B. COMPANIONSHIP SERVICE PROVIDER EXEMPTION**

FLSA Section 13(a)(15) provides an exemption to the minimum wage and overtime requirements for "any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves." FLSA Section 13(b)(21) provides an exemption to overtime requirements (but not the minimum wage requirements) of the Act for "any employee who is employed in domestic service in a household and who resides in such household." The Department of Labor recently made important changes to the

regulations interpreting this exemption. For a discussion of those changes, please see the accompanying paper *“Domestic Service Employees Under the Fair Labor Standards Act.”*

### **C. MOTOR CARRIER ACT EXEMPTION**

FLSA Section 13(b)(1) provides an exemption to overtime requirements (but not the minimum wage requirements) of the Act for employees who are within the authority of the Secretary of Transportation to establish qualifications and maximum hours of service pursuant to Section 204 of the Motor Carrier Act of 1935, except for employees covered by a small vehicle exception. The Motor Carrier exemption can be tricky. Advice of counsel should be obtained before attempting to invoke it.

#### **1. General Rule**

The exemption applies to employees drivers, driver’s helpers, loaders, or mechanics whose duties affect the safety of operation of motor vehicles in transportation on public highways in interstate or foreign commerce and who are employed by a motor carrier or motor private carrier as defined in 49 U.S.C. Section 13102.

To be covered by the exemption, the employee’s duties must include the performance, either regularly or from time to time, of safety-affecting activities on a motor vehicle used in transportation on public highways in interstate or foreign commerce. An employee performing such duties meets the duties requirement regardless of the proportion of safety-related work performed, except where the duties have no substantial direct effect on safety.

Generally, transportation involved in the employee's duties must cross State lines or connect with an intrastate terminal to continue an interstate transportation of goods that have not come to rest at a final destination. However, safety affecting employees who have not made an actual interstate trip may still meet the duties requirement of the exemption if: The employer has an involvement in interstate commerce and the employee could, in the regular course of employment, reasonably be expected to make an interstate journey or worked on the motor vehicle in such a way as to be safety-affecting.

## **2. Exception**

The exemption does not apply to an employee of a motor carrier in any work week in which the employee's work is that of a driver, driver's helper, loader or mechanic affecting the safety of operation of motor vehicles weighing 10,000 pounds or less in transportation on public highways in interstate or foreign commerce, except vehicles: (a) designed or used to transport more than 8 passengers, including the driver, for compensation; or (b) designed or used to transport more than 15 passengers, including the driver, and not used to transport passengers for compensation; or (c) used in transporting hazardous material, requiring placarding under regulations prescribed by the Secretary of Transportation; and the employee performs duties on motor vehicles weighing 10,000 pounds or less.

## **D. RAILROAD EMPLOYEES**

FLSA Section 13(b)(2) provides an exemption to overtime requirements (but not the minimum wage requirements) of the Act for "any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of Title 49."

**E. AIR TRANSPORTATION EMPLOYEES**

FLSA Section 13(b)(3) provides and exemption to overtime requirements (but not the minimum wage requirements) of the Act for “any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C.A. § 181 et seq.]”

**F. SEAMEN**

FLSA Section 13(a)(12) provides and exemption to the minimum wage and overtime requirements for “any employee employed as a seaman on a vessel other than an American vessel.”

FLSA Section 13(b)(6) provides and exemption to overtime requirements (but not the minimum wage requirements) of the Act for “any employee employed as a seaman.”

**G. FIRE PROTECTION OR LAW ENFORCEMENT PERSONNEL**

**1. Section 7(k) Partial Exemption**

FLSA Section 7(k) provides:

No public agency shall be deemed to have violated subsection (a) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of 18 Sec. 207(k)(1)(A)

(A) 216 hours, or

(B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

## **2. Law Enforcement Officers and Firefighters Employed by Small Public Agencies**

Section 13(b)(20) of the FLSA provides an overtime pay exemption for “any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than five employees in fire protection or law enforcement activities, as the case may be.”

In determining whether an employee qualifies for this exemption, the fire protection and law enforcement employees are considered separately. For example, a public agency that employs less than five employees in fire protection activities but more than five employees in law enforcement activities may claim the exemption for the fire protection employees but not for the law enforcement employees. 29 C.F.R. § 553.200(b).

In counting employees, no distinction is made between full-time and part-time employees, or between employees on duty or on leave. 29 C.F.R. § 553.200(b).

Individuals who are not considered employees for purposes of the FLSA under FLSA section 3(e), including persons who are volunteers within the meaning of § 29 C.F.R. § 553.101, and “elected officials and their appointees” within the meaning of 29 C.F.R. § 553.11, are not counted in determining whether the exemption applies.

This exemption applies on a workweek basis. Therefore, employees may be exempt in some workweeks but not exempt in others. 29 C.F.R. § 553.200(b).

In workweeks in which the section 13(b)(20) exemption does not apply, the public agency may utilize the section FLSA section 7(k) exemption. 29 C.F.R. § 553.200(b).

## **H. WORKERS EMPLOYED UNDER COLLECTIVE BARGAINING AGREEMENTS**

### **1. Agreements with 1,040 Hour / 26 Week Provisions**

FLSA Section 7(b)(1) provides an overtime exemption for employees “employed in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks.”

### **2. Agreements with Certain Other Provisions**

FLSA Section 7(b)(2) provides an overtime exemption for employees “employed in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be

guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) of this section or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed.”

#### **I. DISTRIBUTORS OF PETROLEUM PRODUCTS**

FLSA Section 7(b)(3) provides a limited partial overtime exemption for an employee employed “by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if (1) the annual gross volume of sales of such enterprise is less than \$1,000,000 exclusive of excise taxes, (2) more than 75 per centum of such enterprise’s annual dollar volume of sales is made within the State in which such enterprise is located, (3) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale, (4) such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 206 of this title, and (5) if such employee receives compensation for employment in excess of twelve hours in

any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.” This exemption was added to FLSA section 7 in 1966, replacing a complete overtime exemption under FLSA section 13(b)(10) which was repealed.

**J. CERTAIN COMMISSIONED EMPLOYEES OF RETAIL AND SERVICE ESTABLISHMENTS**

FLSA section 13(a)(2) previously provided a minimum wage and overtime exemption for all employees of retail and service establishments. Section 13(a)(2) was repealed in 1989. (The regulations interpreting it, however, remain in place.)

FLSA Section 7(i) contains an overtime (but not minimum wage) exemption applicable to certain commissioned employees of retail and service establishments. It states:

No employer shall be deemed to have violated subsection (a) of this section by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if

(1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 206 of this title, and

(2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

The regulations describe the scope of this exemption:

Section 7(i) was enacted to relieve an employer from the obligation of paying overtime compensation to certain employees of a retail or service establishment paid wholly or in greater part on the basis of commissions. These employees are generally employed in so-called “big ticket”

departments and those establishments or parts of establishments where commission methods of payment traditionally have been used, typically those dealing in furniture, bedding and home furnishings, floor covering, draperies, major appliances, musical instruments, radios and television, men's clothing, women's ready to wear, shoes, corsets, home insulation, and various home custom orders. There may be other segments in retailing where the proportionate amount of commission payments would be great enough for employees employed in such segments to come within the exemption. Each such situation will be examined, where exemption is claimed, to make certain the employees treated as exempt from overtime compensation under section 7(i) are properly within the statutory exclusion.

29 C.F.R. § 779.414.

## **K. AGRICULTURAL EMPLOYEES**

The FLSA contains numerous exemptions applicable to workers employed in agriculture or activities related to agriculture. For purposes of brevity, they are omitted from this paper. For information on agricultural exemptions, please contact the author of this paper.

## **L. OTHER EXEMPTIONS**

### **1. Babysitters**

FLSA Section 13(a)(15) provides an exemption to the minimum wage and overtime requirements for “any employee employed on a casual basis in domestic service employment to provide babysitting services.”

### **2. Amusement, Recreational, and Similar Employees**

FLSA Section 13(a)(3) provides an exemption to the minimum wage and overtime requirements for “any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in

any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture.”

FLSA Section 13(b)(29) provides an exemption to overtime requirements (but not the minimum wage requirements) of the Act for “any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed.”

### **3. Employees Engaged in Fishing or Operations of Aquatic Products**

FLSA Section 13(a)(3) provides an exemption to the minimum wage and overtime requirements for “any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges,

seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee.”

#### **4. Employees of Limited Circulation Newspapers**

FLSA Section 13(a)(8) provides an exemption to the minimum wage and overtime requirements for “any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto.”

#### **5. Announcers, etc., of Certain Radio or TV Stations**

FLSA Section 13(b)(9) provides an exemption to overtime requirements (but not the minimum wage requirements) of the Act for “any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area.”

**6. Switchboard Operators Employed by Small Public Phone Companies**

FLSA Section 13(a)(10) provides an exemption to the minimum wage and overtime requirements for “any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations.”

**7. Certain Employees of Auto, Truck, Farm Implement, Boat and Aircraft Dealers**

FLSA Section 13(b)(11) provides an exemption to overtime requirements (but not the minimum wage requirements) of the Act for “(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or (B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers.”

**8. Local Delivery Drivers**

FLSA Section 13(b)(2) provides an exemption to overtime requirements (but not the minimum wage requirements) of the Act for “any employee employed as a driver or driver’s helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 207(a) of this title.”

## **9. Taxicab Drivers**

FLSA Section 13(b)(17) provides an exemption to overtime requirements (but not the minimum wage requirements) of the Act for “any driver employed by an employer engaged in the business of operating taxicabs.”

## **10. Movie Theater Employees**

FLSA Section 13(b)(27) provides an exemption to overtime requirements (but not the minimum wage requirements) of the Act for “any employee employed by an establishment which is a motion picture theater.”

## **11. Spouses Who Serve as House Parents**

FLSA Section 13(b)(24) provides an exemption to overtime requirements (but not the minimum wage requirements) of the Act for “any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children (A) who are orphans or one of whose natural parents is deceased, or (B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than \$10,000.”

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**Please contact the author for additional information or for assistance with Fair Labor Standards Act compliance.**