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# Overtime Labor Law

***6 compliance tips to avoid overtime lawsuits, wage-and-hour Labor audits and FLSA exemption mistakes***

Special Report from

**Business  
Management  
Daily**

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## Overtime Labor Law:

### *6 compliance tips to avoid overtime lawsuits, wage-and-hour Labor audits and FLSA exemption mistakes*

**E**mployers, beware: The U.S. Department of Labor (DOL) is launching a crackdown on employers that stiff workers out of overtime pay. New Labor Secretary Hilda Solis is promising to “refocus the agency on its enforcement responsibilities.” *The proof:* The DOL’s Wage and Hour Division is adding 250 new field investigators—a staff increase of more than a third—to look into noncompliance on wage-and-hour labor issues.

At the same time, a [recent report](#) by the Seyfarth Shaw law firm brings some other ominous news for employers: Employment law class-action litigation is growing at an explosive rate, and the economic meltdown will probably fuel even more lawsuits this year.

Wage-and-hour labor litigation continues to increase exponentially. Federal class actions brought under the Fair Labor Standards Act (FLSA) outnumbered all other types of private class actions in employment-related cases. Particularly hard hit: employers in California, Florida, Illinois, New Jersey, New York, Massachusetts, Pennsylvania and Texas.

How high is the price tag? The top 10 wage-and-hour labor class-action settlements in 2008 totaled \$252.7 million.

Clearly, this *is not* the time to make an FLSA compliance mistake. Use this special report, *Overtime Labor Law*, to review your overtime pay policy and double-check your FLSA exempt employees’ status. And if you’ve been notified that a DOL auditor is coming to inquire about possible wage-and-hour labor violations, get prepared by taking the self-audit at the end of this report.

## **Overtime Labor Law: Compliance Tips** **#1**

### *Guidelines on classifying FLSA exempt employees*

In 2004, new DOL regulations took effect, constituting the most dramatic changes to federal overtime law in more than 50 years.

By updating certain provisions of the FLSA, the DOL redefined which white-collar employees are “exempt” under the FLSA (i.e., not eligible for overtime pay) and which are “nonexempt” (eligible for overtime pay).

Those federal overtime rules clarify and alter both the “salary test” and the notoriously confusing “duties tests” that are used to determine employees’ FLSA exemption status.

Exempt positions generally fall into five categories:

1. Executive
2. Administrative
3. Professional (both learned and creative professionals)
4. Computer professional
5. Outside sales

In addition, the revised overtime regulations contained a new [“highly compensated” employee exemption](#) for workers who are paid total annual compensation of \$100,000 or more.

Following is a detailed breakdown of the exemption categories, adapted from [DOL fact sheets](#).

## **Overtime Labor Law: Compliance Tips**

**#2**

### ***Salary-basis test for exempt employees***

Being paid on a salary or fee basis is the quid pro quo of exempt employees. They aren’t paid overtime for working more than 40 hours a week; in exchange, their employer must provide a guaranteed salary, which can’t be reduced when they work fewer than 40 hours.

This reflects the understanding that exempt employees have the discretion to manage their time and are not answerable for hours worked or the number of tasks performed. Rather, they’re paid for the general value of the services they provide. In addition, you may not deduct pay for time when work isn’t available if salaried workers are ready, willing and able to work.

Under the DOL’s revised FLSA regulations, the minimum salary a worker must earn to qualify as exempt is \$455 per week, \$910 biweekly (every other week), \$985.83 semimonthly (every 1st and 15th of the month), \$1,971.66 monthly or \$23,660 annually.

Other characteristics of being paid on a salary basis:

- **Exempt employees earn a set salary** even if they work only part of the week.

- **Employers can't dock their pay** for a partial-day absence.
- **Employers can't dock their pay** as a disciplinary measure unless they have committed a serious safety infraction (breaking a rule designed to prevent endangering the facilities or other workers). The new regulations state that you may deduct for "unpaid disciplinary suspensions of a full day or more imposed in good faith for infractions of workplace conduct rules," such as sexual harassment or workplace violence. However, you will need a written policy that is applied uniformly to all workers.

Make sure you abide by the salary rules. If you don't, the employee is no longer exempt, no matter what his or her duties and responsibilities are. And remember: Destroying a person's exemption can make you liable for two years' overtime pay for any hours worked beyond 40 per week.

## **Overtime Labor Law: Compliance Tips** **#3**

### ***Duties tests for the 5 FLSA exemption categories***

Workers who earn at least \$455 a week may be exempt from overtime pay if they also meet the appropriate tests for their classification, as outlined in this section.

#### **1. Exempt executive employee**

To qualify for the executive exemption, an employee must earn a minimum of \$455 per week and meet the following tests:

- Primary duty: manages the enterprise or a customarily recognized department or subdivision of the enterprise.
- Customarily directs the work of two or more other employees.
- Has 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 must be given particular weight.

#### **2. Exempt administrative employee**

To qualify for the administrative exemption, an employee must earn a minimum of \$455 per week and meet the following tests:

- Primary duty: performs office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.
- Exercises discretion and independent judgment with respect to matters of significance in performing his or her primary duty.

## Double-check state overtime laws

Several states have established their own separate overtime-related laws, some in response to the 2004 federal changes to the FLSA.

Those states include Alaska, Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, West Virginia and Wisconsin, as well as the District of Columbia.

Two examples:

**1. Minnesota wage law:** Like the FLSA regulations, Minnesota's law exempts executive, administrative, professional and outside sales personnel. However, computer specialists and highly compensated workers who meet the federal exemption may be entitled to overtime under [Minnesota law](#).

Also, while Minnesota law exempts fewer classes of workers from overtime, it does not require employers to pay overtime until workers have worked *48 hours* in one week (compared to 40 hours per week under the FLSA).

**2. California wage law:** The [state overtime law](#) requires employers to pay nonexempt workers one and one-half times their regular hourly wage for each hour worked over *eight hours in one day* or more than 40 hours in one week. For all hours worked in excess of 12 hours per day (or eight hours on the seventh consecutive day of work), employers must pay them *double* their hourly wage.

**Tip:** Check with your [state labor department](#) to ensure compliance with state law as well as federal overtime law and employee exemptions.

## 3. Exempt professional employee

The specific requirements for exemption as bona fide professional employees are summarized below. These employees fall into two general categories: **learned professionals** and **creative professionals**.

### ***Learned professional exemption:***

To qualify for the learned professional exemption, an employee must earn a minimum of \$455 per week and meet these tests:

- Primary duty: performs work requiring advanced knowledge, defined as work that's predominantly intellectual in character and requires consistent exercise of discretion and judgment.
- Has advanced knowledge in a field of science or learning that's customarily acquired by a prolonged course of specialized intellectual instruction.

Examples in the learned professional category include doctors and lawyers, teachers, registered or certified medical technologists, registered nurses, dental hygienists, physician assistants, accountants, chefs, athletic trainers, and funeral directors and embalmers.

***Creative professional exemption:***

To qualify for the creative professional exemption, an employee must earn a minimum of \$455 per week and meet these tests:

- Primary duty: performs work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. The exemption doesn't apply to work that a person could perform with general manual or intellectual ability and training.
- Works in a recognized field of artistic or creative endeavor, including music, writing, acting and the graphic arts.

Unfortunately, it's hard to assess whether someone is a creative professional since educational background isn't a prerequisite. Rather, the exemption hinges on whether the person holding the position is engaged in a creative endeavor. Thus you should carefully review your own job descriptions before placing someone in the creative professional exempt category.

Generally, the following are exempt creative professionals: actors, musicians, painters and artists, cartoonists, essayists, writers in advertising agencies and journalists.

**4. Computer-related professional exemption**

To qualify for this exemption, a computer employee must meet all the following tests:

- Be compensated *either* on a salary or fee basis at a rate not less than \$455 per week or, if paid on an hourly basis, earn at least \$27.63 per hour.
- Must be a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below.
- Primary duty must consist of:
  1. **Application of systems analysis** techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications.

2. **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.
3. **Design, documentation**, testing, creation or modification of computer programs related to machine operating systems.
4. **Or a combination** of the aforementioned duties that requires the same level of skills.

No specific educational requirement applies to this exemption. The DOL says, however, that workers who simply use computers to aid in their work, such as drafters and others in computer-aided design, don't qualify. This exemption also doesn't include those who repair computers or assemble them.

(**Caution:** This is an area where many employers go wrong by trying to classify even IT help-desk workers as exempt.)

### [5. Outside sales employee exemption](#)

Outside sales employees also may be exempt if their primary duties are one of the following:

- Making sales *or*
- Obtaining orders or contracts for services or use of facilities for which a consideration will be paid by the customer *and*
- Who are customarily and regularly engaged away from the employer's place or places of business while selling or obtaining orders or contracts for services.

Essentially, an outside sales employee spends most of his or her time away from the employer's office facilities "on the road" making sales calls. The person doesn't lose exempt status by performing a few tasks that aren't directly related to sales.

The outside sales exemption doesn't apply to salespersons who work in house or may work from a home office. The regulation specifies that "outside sales does not include sales by mail, telephone or the Internet . . ." unless the person is following up on a personal sales call. The crucial factor distinguishing outside salespeople from others is the emphasis on face-to-face selling.

No minimum salary requirement applies for outside sales employees. Many are paid straight commission rather than a salary. This category includes insurance and real estate salespeople.

### Online resources: FLSA exemptions

The DOL offers two interactive e-tools, [FLSA Coverage and Employment Status Advisor](#) and [FLSA Overtime Security Advisor](#), to help you determine the status of a particular position.

Safeguard your organization by using them to classify new positions and audit your existing worker classifications.

## **Overtime Labor Law: Compliance Tips**

**#4**

### ***6 legal safeguards for FLSA exemptions***

#### **1. Adopt a safe-harbor policy**

When the DOL rewrote the overtime regulations, it created a “safe harbor” defense for employers that unintentionally make improper deductions from exempt employees’ salaries. That provision allows you to correct improper-deduction mistakes without losing an employee’s exempt status.

Prior to that change, a single mistake could have resulted in lost exempt status, overtime back pay and fines.

To use that defense, you must adopt a policy that bans improper deductions and provides an avenue to raise complaints.

**Tip:** The DOL offers a [Model Salary Basis Policy](#) that you can, and should, adopt for your own organization.

#### **2. If you reclassify an employee, do so with finesse**

Whenever you reclassify an employee as nonexempt, you will likely encounter one of two reactions:

- Some employees, especially those who view themselves as “management,” will view a reclassification as a demotion or an insult.
- Others may use reclassification to complain that they should have received overtime for as long as they’ve been employed.



To soften these reactions, consider “selling” reclassification by explaining that the organization has changed the way it compensates certain employees in an effort to recognize their contributions.

Draw the spotlight away from reclassifications by implementing them at the same time as other organization changes, such as new fringe-benefit programs.

In any event, don’t say the organization is changing a classification to comply with the wage-and-hour labor law. Doing this would effectively invite employee complaints.

### **3. How to avoid paying overtime to an employee who doesn’t satisfy one of the white-collar exemptions**

Although all your nonexempt employees must receive overtime pay whenever they work more than 40 hours in a workweek, you should be aware of two “loopholes”:

- **Independent contractors.** In some cases, it may be appropriate to reclassify employees as independent contractors, who are obviously not due overtime pay. Such a reclassification won’t be possible in most cases, but it’s worth looking into. Remember that titles don’t matter. What matters is whether the “economic realities” demonstrate that a worker may properly be classified as a contractor.
- **Salaried, nonexempt.** Many employers are unaware that some employees can be properly classified as “salaried nonexempt.”

Specifically, DOL rules say a nonexempt employee whose hours fluctuate week-to-week can be paid on a salary basis if an agreement exists between you and the employee that he or she will receive overtime pay equal to one-half his or her regular rate.

Using a “salary-plus-half-time” calculation, instead of the traditional calculation, means that the employee will earn less overtime pay. Indeed, under salary-plus-half-time calculation, an employee’s regular rate grows smaller for each hour worked beyond 40 hours a week.

### **4. Fine-tune your payroll record-keeping**

Beyond proper classification, simply keeping accurate records goes a long way toward compliance.

The FLSA's record-keeping requirements for exempt employees differ from those for nonexempt workers. Because you don't pay exempt employees by the hour, you shouldn't track the exact number of hours they work on a daily basis. Doing so could make it seem to a wage-and-hour Labor auditor that you are indeed basing pay on the number of hours worked, which might raise the question of whether the employee is truly exempt.

However, just because a worker is exempt doesn't mean your company is freed from keeping records on him or her. With exempt employees, you should keep records that describe the workweek and the wages paid for that period.

Specifically, you should keep these records on FLSA exempt employees:

- Personal information, including name, home address, occupation, gender (for equal pay laws), birth date for workers under age 19 (for child labor laws) and the person's workplace identification number
- Time of day and day of week when the employee's workweek begins
- Total wages paid each pay period
- Date of payment and the pay period covered by each payment

Your records for exempt employees can also track which days are used for sick days, vacation days or personal days.

**Advice:** The FLSA's record-keeping rules are complex. Additional factors such as industry and type of work can come into play. To find more advice and read the pertinent federal regulations (29 CFR 516, subparts A and B), go to the [Record-keeping & Reporting](#) section of the DOL site or call the FLSA hotline at (202) 693-0067.

### **5. If exempt employee status is in question, issue a 'good-faith' reply**

If employees come forward to protest that you owe them overtime pay because they should truly be nonexempt, it pays to act fast and be able to show good cause why you classified them as exempt in the first place.

Your quick response may determine whether you'll owe just the back overtime pay or *double* that amount. The FLSA allows employees to collect double (or "liquidated") damages unless you can show your mistake was made in good faith and you honestly intended to classify the employee correctly. Plus, you may be on the hook for attorneys' fees.

To head off such complaints, host an annual classification review. Have a team compare all employees' job descriptions (and actual duties) against the FLSA

exemption regulations. (Some states set their own rules. Get a legal opinion if you're stumped about an employee's status.)

If any positions should be switched to hourly, make the change as soon as possible and start paying overtime. Then, do your best to calculate what you owe for past unpaid overtime.

**Bottom line:** If an employee files an overtime suit, your annual classification audit would likely be enough proof of your good-faith efforts to ward off double damages.

**Case in point:** A group of technical writers sued Indiana Michigan Power, alleging it had wrongly classified them as exempt. The court agreed. It then had to decide whether the utility made the mistake in good faith. At stake were double damages and attorneys' fees. The three strikes against the employer: (1) It couldn't explain why it made the writers exempt. (2) The decision-makers weren't familiar with the FLSA overtime rules. (3) The employer didn't seek outside help when it received the original complaint, but waited until it was sued.

All this indicated a lack of good faith. As a result, the company's liability doubled from \$215,000 to \$430,000. Plus, the court ordered it to pay another \$111,000 to the attorneys. (*Renfro, et al., v. Indiana Michigan Power Co.*, No. 1:99-CV-877, WD MI, 2007)

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## 6. If you have doubts about how to classify employees, ask the DOL

You can request an [opinion letter](#) from the DOL. If you make the request *before* anyone questions your classification and provide the agency with all relevant information, chances are the court will say you acted in good faith. Also, have an experienced attorney review your job descriptions to make sure you haven't made any obvious errors. It's another way to show good faith.

**Case in point:** Rahaman Khan worked for IBI Armored Service on the company's truck dock. IBI classified Khan as an exempt employee under an obscure exception to the FLSA that excludes from the law some dock workers who load trucks. Instead, they are regulated under the Motor Carrier Act (MCA), which doesn't require overtime pay.

Khan sued for unpaid overtime, claiming he wasn't really a "loader," the exempt category. Khan and IBI agreed that if he was covered by the FLSA, he was entitled to \$7,744 in unpaid overtime.

The court concluded that Khan was not a loader because his actual duties did not involve getting on trucks and placing cargo. IBI couldn't show that it relied on expert opinions, DOL or Transportation Department guidance or anything other than its own assertion that Khan was exempt. In such cases, wrote the judge, "double damages are the norm." It ordered IBI to pay Khan \$15,488. (*Khan v. IBI Armored Services*, No. 1:04-CV-762, ED NY, 2007)

## **Overtime Labor Law: Compliance Tips**

**#5**

### ***What to do when a DOL auditor comes a'knocking***

Suppose an employee has complained to the DOL about possible wage-and-hour or overtime violations in your workplace. Once you've been notified that an auditor is coming, get prepared by conducting your own audit.

DOL auditors have plenty of latitude to inspect records and interview employees, so make sure you've done everything possible to discover and correct any compliance problems as well as gather documents to defend your decisions.

If faced with an audit, you should:

- **Review the differences** between federal and state overtime labor laws to ensure you're complying with the stricter of the two.
- **Reread the job descriptions** of any positions that might be in question. Interview people in those jobs and their supervisors to ensure their job descriptions are accurate. Find out what the workers actually do, and check timekeeping records. Promptly correct any errors.
- **Interview exempt employees** to find out how much time they spend on duties typically done by hourly employees. If it's more than 20% (or in retail, 40%), consider reclassifying the employee as nonexempt. (There's no liability in classifying too many people as nonexempt; it's the opposite that plunges employers into hot water.)
- **Check to see that employees are performing their jobs as assigned** and working the hours designated by management. If they're not, insist they start doing so.

- **Train supervisors** and managers on how to determine who's an exempt employee and who's not.
- **Check your overtime records.** If you discover unpaid overtime, pay it immediately—even if the overtime wasn't approved.
- **Review your policy manual** with an experienced employment attorney to make sure it's complete and in line with the law.
- **Enlist help** with all this from a consultant or attorney. Many of the regulations are difficult to interpret, and the wrong call could cost you plenty.

**Overtime Labor Law: Compliance Tips** #6

**Self-Audit: FLSA exempt or nonexempt employee?**

To be considered exempt from overtime, an employee must generally be paid on a salary basis and his or her job duties must meet the DOL's standards for one of the six exemption categories discussed below. Take this self-audit to test whether you're properly classifying workers as exempt.

■ **Executive Employee**

Answer the following questions to determine whether you've misclassified a worker as an exempt executive:

	Yes	No	Don't Know
1. Is the employee's primary duty managing the enterprise or a department or subdivision of the enterprise?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the employee customarily direct the work of two or more other employees or their equivalent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the employee have the authority to hire or fire, and do his or her recommendations carry significant weight if unauthorized to make the final decision?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Is the employee paid the equivalent of at least \$455 per week on a salary basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "No" to any of these questions, you may have misclassified the worker as an exempt executive. **Note:** If the employee is at least a 20% owner of the

*business and meets requirements #1 and #2 above, he or she need not meet the salary requirement in #4 or the authority requirement in #3.*

■ **Administrative Employee** \_\_\_\_\_

*Answer the following to determine whether a worker is misclassified as an exempt administrative employee:*

- |                                                                                                                                                                                                                                                                            | Yes                      | No                       | Don't<br>Know            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. Is the employee's primary duty performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers?                                                                                      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does the employee exercise discretion and independent judgment with respect to matters of significance? That is, does he or she evaluate and compare possible courses of action and then make a decision or recommendation after considering the various possibilities? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the employee paid the equivalent of at least \$455 per week on a salary basis?                                                                                                                                                                                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

*If you answered "No" to any of these questions, the employee may be misclassified as exempt administrative.*

■ **Learned Professional Employee** \_\_\_\_\_

*Answer the following to determine whether a worker is misclassified as an exempt learned professional:*

- |                                                                                                                                                                                                                 | Yes                      | No                       | Don't<br>Know            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. Is the employee's primary duty to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Is the advanced knowledge obtained by completing an academic course of study resulting in a four-year college degree or leading to certification?                                                            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the employee paid the equivalent of at least \$455 per week on a salary basis?                                                                                                                            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

*If you answered "No" to any of these questions, the employee may be misclassified as an exempt learned professional. **Exception:** Those who've completed the educational requirements for a law or medical degree need not meet the minimum salary requirement. Also, teachers need not be certified or meet the minimum salary requirement to qualify as learned professionals.*

■ **Creative Professional Employee** \_\_\_\_\_

*Answer the following to determine whether a worker is misclassified as an exempt creative professional:*

- |                                                                                                                                                                                              | Don't<br>Yes No Know                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| 1. Is the employee's primary duty to perform work requiring invention, originality or talent in a recognized field of artistic endeavor such as music, writing, acting and the graphic arts? | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 2. Does the work require more than intelligence, diligence and accuracy (i.e., does it require "talent")?                                                                                    | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 3. Is the employee paid the equivalent of at least \$455 per week on a salary basis?                                                                                                         | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |

*If you answered "No" to these questions, you may have misclassified a worker as an exempt creative professional.*

■ **Computer Professional** \_\_\_\_\_

*Answer the following to determine whether a worker is misclassified as an exempt computer professional:*

- |                                                                                                                                                                                                           | Don't<br>Yes No Know                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| 1. Is the employee paid at least \$455 per week on a salary or fee basis or, if paid hourly, at a rate of not less than \$27.63 per hour?                                                                 | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 2. Is the employee's primary duty:                                                                                                                                                                        |                                                                            |
| • Application of system analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or                                      | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| • 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; or | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| • Design, testing, documentation, creation or modification of computer programs related to machine operating systems; or                                                                                  | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| • A combination of the aforementioned duties requiring the same level of skills?                                                                                                                          | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |

*If you answered "No" to #1 or were unable to answer "Yes" to any parts under #2, you may have misclassified the worker as an exempt computer professional.*

■ **Outside Sales Employee**

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*To determine whether a worker has been misclassified as an exempt outside sales employee, answer the following questions:*

- |                                                                                                                                                                                    | Yes                      | No                       | Don't Know               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| 1. Is the worker's primary duty making outside sales?                                                                                                                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does he or she regularly work away from the company's place of business?                                                                                                        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Does the worker sell tangible or intangible items, such as goods, insurance, stocks, bonds or real estate, or obtain orders or contracts for services or the use of facilities? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

*If you answered "No" to any of these questions, you may have misclassified the worker as an exempt outside sales employee.*