

Special Exemptions Classification Rules - Hawaii

In addition to the more typical “white collar¹” exemptions under both federal and state law (“Executive, Administrative, and Professional” exemptions), there are a number of special exemptions. This document provides guidelines about some of the more commonly used special exemptions.

SALES: In general, the exemptions available for salespersons fall into one of the two following categories. Please keep in mind, however, that these sales exemptions are often misunderstood and misused by employers. In addition, there is significant deviation between federal and state regulations involving these exemptions. The following summarizes how to exempt salespersons from both federal and state law.

An exempt **OUTSIDE SALESPERSON** must:

- ◆ be employed for the purpose of, and who is customarily and regularly engaged **away from the employer’s place or places of business** in: making sales 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**
- ◆ not spend more than 40% of his/her weekly work hours performing tasks other than those described above. Work performed incidental to and in conjunction with the employee’s own outside sales or solicitations (i.e. booking appointments, drafting reports) is considered exempt if it does not exceed the stated 40% limit; **AND**
- ◆ not spend more than 5% of his/her weekly hours on work unrelated to outside sales or solicitations.

An exempt **INSIDE SALESPERSON** must:

- ◆ be guaranteed compensation totaling \$2,000 or more per month; whether paid weekly, biweekly or monthly; **AND**
- ◆ earn in excess of one and one-half times the federal minimum wage; **AND**
- ◆ be employed by a retail or service establishment;
- ◆ have more than 50% of his/her compensation for a representative period (not less than one month) be in the form of commissions of sales of goods or services.

¹ For details about the “white collar” exemptions, please refer to our HR Info Bulletin entitled “Exempt vs. Non-Exempt.”

An exempt **COMPUTER PROFESSIONAL** must:

- ◆ be guaranteed compensation totaling \$2,000 or more a month, whether paid weekly, biweekly, or monthly.
- ◆ be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- ◆ have as his/her primary duty:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; **OR**
 - 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; **OR**
 - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; **OR**
 - A combination of the aforementioned duties, the performance of which requires the same level of skills.

No higher learning degree is required, although an individual who meets this exemption may have one. There is also no licensing or certification requirement, and any such license or certification alone will not guarantee this exemption.

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.

An exempt **LEARNED OR CREATIVE PROFESSIONAL** must:

- ◆ be compensated at a rate of not less than \$455 per week (which includes a fixed salary or fixed fee of not less than \$210 per week); **AND**
- ◆ have as his/her primary duty the performance of work that either:
 - requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or study, as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual or physical processes. (“Learned Professional”); **OR**
 - is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the individual (“Creative Professional”); **AND**
- ◆ perform work that is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; **AND**
- ◆ consistently exercise discretion and independent judgment in the performance of the above duties.

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