

***Note:** The Department of Labor revised the regulations located at 29 C.F.R. part 541 with an effective date of January 1, 2020. WHD will continue to enforce the 2004 part 541 regulations through December 31, 2019, including the \$455 per week standard salary level and \$100,000 annual compensation level for Highly Compensated Employees. The final rule is available at: <https://www.federalregister.gov/documents/2019/09/27/2019-20353/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>.

U.S. Department of Labor
Wage and Hour Division



Fact Sheet #17H: Highly Compensated Employees and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)

This fact sheet provides information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the FLSA as it applies to highly compensated employees as defined in 29 C.F.R. § 541.601.

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at not less than time and one-half the regular rate of pay for all hours worked over 40 in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both [minimum wage](#) and [overtime pay](#) for employees employed as bona fide [executive](#), [administrative](#), [professional](#) and [outside sales](#) employees. Section 13(a)(1) and Section 13(a)(17) also exempts certain [computer](#) employees. To qualify for exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$684* per week.

Highly Compensated Employees

The regulations contain a special rule for “highly compensated” employees who are paid total annual compensation of \$107,432 or more. A highly compensated employee is deemed exempt under Section 13(a)(1) if:

1. The employee earns total annual compensation of \$107,432 or more, which includes at least \$684* per week paid on a salary or fee basis;
2. The employee’s primary duty includes performing office or non-manual work; and
3. The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Thus, for example, an employee may qualify as an exempt highly compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.

Total Annual Compensation

The required total annual compensation of \$107,432 or more, which includes at least \$684 per week paid on a salary or fee basis, may otherwise consist of commissions, nondiscretionary bonuses and

other nondiscretionary compensation earned during a 52-week period, but does not consist of credit for board, lodging, or other facilities, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits.

Additionally, the weekly salary amount of \$684 must be paid in its entirety. Employers may not use nondiscretionary bonuses and incentive payments (including commissions) to satisfy any portion of the weekly standard salary level for HCEs.

Make-up Payments and Prorating

There are special rules for prorating the annual compensation if employees work only part of the year, and which allow payment of a single lump-sum, make-up amount to satisfy the required annual amount at the end of the year and similar make-up payments to employees who terminate before the year ends.

Customarily and Regularly

“Customarily and regularly” means greater than occasional but may be less than constant, and includes work normally and recurrently performed every workweek but does not include isolated or one-time tasks.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When state law differs from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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