

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-3
DATE: November 15, 2007
SUBJECT: First Reading Ordinance No. 975-07 Salary Schedule

CONTACT PERSON: Deborah Knight, City Administrator



ISSUE:

The issue before the City Council is first reading of Ordinance No. 975-07 (Attachment A) to adopt a salary schedule for employees.

RCW 35A.33.050 (Attachment B) requires that salary ranges for various positions in the City be made a part of the annual budget document adopted with the annual budget. Ordinance No. 975-07 fulfills this requirement.

STAFF RECOMMENDATION:

Move to introduce Ordinance No. 975-07 Salary Schedule for a first reading and pass on to a second reading on December 13, 2007.

SUMMARY:

The City Council has the authority to set pay and benefits. As a part of the annual budget process, the City Council must adopt a salary and compensation ordinance for 2008 to establish pay levels for all employees. Salary levels for represented (union) employees are established during contract negotiations. Salary levels for non-represented employees are set by the City Council annually during the budget process.

The City Council reviewed a proposed salary schedule for non-represented employees at its November 8, 2007 meeting and directed staff to return with an adopting ordinance.

The proposed ordinance also includes changing the Grants/Economic Development Coordinator position from a non-exempt position to an exempt position under the federal Fair Labor Standards Act (FLSA).

The FLSA defines positions as either exempt (exempt from overtime or "salary") or nonexempt (subject to overtime laws – eligible for overtime or "hourly"). The FLSA requires that positions meet certain "tests" to qualify as exempt from overtime. The Grants/Economic Development Coordinator meets the FLSA exempt requirements

under the "Administrative" test (Attachment C). There is no change in pay as a result of the determination that the position is no longer eligible for overtime under the Fair Labor Standards Act. Rather, the previously posted hourly rate has been converted to a monthly salary.

BACKGROUND:

The City Council discussed establishing salary ranges for all non-representative employees at the Council meeting on November 8, 2007. Council directed staff to return with an adopting ordinance.

At its meeting on August 23, 2007, the City Council approved changing the flat rate salary for the position of police chief to a salary range. The police chief's position was discussed outside of the budget process because of the immediate need to initiate a recruiting effort to fill the position following Chief Walser's resignation. At the meeting, the City Council evaluated four alternatives:

1. Keep the existing flat rate
2. Adopt a 2-step salary range using the 2008 salary as a starting point.
3. Adopt a 5-step salary range using the 2008 salary as a starting point.
4. Adopt a 5-step salary range using comparable cities as a starting point

The City Council approved alternative number 3 - a five step salary range using the 2008 salary as a starting point providing a 3% increase between each step based on satisfactory performance.

During the discussion to establish a salary range for police chief, City staff recommended establishing salary ranges for all non-represented employees during the annual budget process. A salary range allows the Mayor to negotiate with potential candidates based on the knowledge, skills and abilities they bring to the job.

For consistency, the staff recommendation is to use the same methodology for all non-represented employees. The salary ranges for non-represented employees are listed in under Section 1 of Ordinance No. 975-07.

FISCAL IMPACT:

The fiscal impacts for the 2008 budget are limited to the proposed 3.3% COLA adjustment. The impact for years 2009-2012 will depend on Council actions during each year's annual budget process.

City staff are not proposing to increase non-represented salaries for the 2008. The proposed salary ranges would be for advertising and recruiting purposes only and would apply to the newly appointed positions in 2008.

The drawback is the impact to the General Fund. The Council may not have full control of the timing and amount of future pay increases. Overall, the impact to the General Fund is relatively small. However, increases to salaries could become an obligation.

ALTERNATIVES

1. Move to introduce Ordinance No. 975-07 Salary Schedule for a first reading and pass on to a second reading on December 13, 2007.

This alternative implies that the Council is prepared to adopt the salary ordinance at second reading scheduled for December 13, 2007.

2. Do not move introduce Ordinance No. 975-07 Salary Schedule for a first reading and pass on to a second reading on December 13, 2007.

This alternative implies that the Council has questions or concerns regarding the salary ordinance. The City Council may direct staff to make changes to the salary ordinance prior to second reading scheduled for December 13, 2007.

RECOMMENDED ACTION:

MOVE TO INTRODUCE ORDINANCE NO. 975-07 SALARY SCHEDULE FOR A FIRST READING AND PASS ON TO A SECOND READING ON DECEMBER 13, 2007.

ATTACHMENTS:

Attachment A – Salary Ordinance No. 975-07

Attachment B – RCW 35A.33.050

Attachment C – October 1, 2007 FLSA memo to Donna Murphy

**CITY OF SULTAN
ORDINANCE NO. 975-07**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SULTAN
WASHINGTON ESTABLISHING SALARY RATES FOR PERSONNEL

WHEREAS, RCW 35A.33.050 requires that salary ranges for various positions in the City be made a part of the annual budget document adopted with the annual budget, and

WHEREAS, the City Council has determined it appropriate to adjust salary ranges for non-represented employees in order to permit salary increases along with approval of benefits,

NOW, THEREFORE, be it ordained by the City Council of the City of Sultan, Washington as follows:

Section 1 Salaries. As part of the City's annual budget, monthly salaries for non-represented employees are hereby approved as follows:

Salary Schedule 2008-2012

Salary Schedule (Steps) Steps 2-5 do not include COLA					
	Step 1 (2008)	Step 2 (2009)	Step 3 (2010)	Step 4 (2011)	Step 5 (2012)
Grants/Economic Dev	4,266	4,394	4,526	4,663	4,801
Building Official	4,731	4,873	5,019	5,169	5,324
Clerk/Deputy Finance Director	5,411	5,573	5,740	5,913	6,090
Public Works Director	5,436	5,599	5,767	5,940	6,118
City Engineer	5,522	5,688	5,859	6,034	6,215
Police Chief	6,424	6,617	6,815	7,020	7,230
Community Development Director	6,720	6,922	7,130	7,344	7,564
City Administrator	7,524	7,750	7,982	8,222	8,468

Section 3 Union Employees. Wages and benefits for Union represented employees shall be in accordance with the current Union contracts, the salary scales for which are attached to this Ordinance (Exhibit A).

Section 4 Effective Date of Increase: The amendments to the annual salaries provided for in this ordinance shall become effective with the first payroll in 2008.

Section 5 Repealer: Any and all other ordinances or parts of ordinances of the City of Sultan inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 6 Severability: If any section of this ordinance, or if any subsection or part shall be declared unlawful, the balance of this ordinance and of each section shall remain in full force and effect.

Section 7 Effective Date: This Ordinance shall be in full force and effect five days after publication as required by law.

PASSED by the City Council and APPROVED by the Mayor this 13th day of December, 2007.

Benjamin Tolson, Mayor

ATTEST:

Laura J. Koenig, City Clerk

Approved as to form:

Thom H. Graafstra, City Attorney

APPENDIX "A"
to the
AGREEMENT
by and between
CITY OF SULTAN, WASHINGTON
and
PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS
LOCAL UNION NO. 763
(Representing the Law Enforcement Officers)
January 01, 2007 through December 31, 2008

THIS APPENDIX is supplemental to the AGREEMENT by and between the CITY OF SULTAN, WASHINGTON, hereinafter referred to as the Employer, and PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS, LOCAL UNION NO. 763, affiliated with the International Brotherhood of Teamsters, hereinafter referred to as the Union.

A.1 Effective January 01, 2006, the hourly rates of pay for classifications covered by the Agreement shall be as follows:

Police Recruit I	(00-06 months)	\$17.17
Police Officer II	(07-12 months)	\$18.95
Police Officer III	(13-24 months)	\$20.66
Police Officer IV	(25-36 months)	\$22.97
Police Officer V	(37-48 months)	\$24.76
Police Officer VI	(49-60 months)	\$26.41
Senior Police Officer VII	(61+ months)	\$28.14
*Corporal		\$29.55

*The rate of pay for Corporal Classification will be a minimum of five percent (5%) above the rate of pay for a "Senior Police Officer VII.

A.1.1 Effective January 01, 2007, the rates of pay set forth within Section A.1 shall be increased by one hundred percent (100%) of the percentage increase set forth in the Urban Wage Earners and Clerical Workers (CPI-W), All Items Revised Series (1982-84=100) for the Seattle-Tacoma-Bremerton Area for the period from June 2005 to June 2006, as is published by the Bureau of Labor Statistics, United States Department of Labor.

Effective January 01, 2007, the hourly rates of pay for classifications covered by the Agreement (reflect a four point six percent (4.6%) increase) shall be as follows:

Police Officer I	(00 - 12 months)	\$19.82
Police Officer II	(13-24 months)	\$21.61
Police Officer III	(25-36 months)	\$24.03
Police Officer IV	(37-48 months)	\$25.90
Police Officer V	(49-60 months)	\$27.62
Senior Police Officer VI	(61+ months)	\$29.43
*Corporal		\$30.91

*The rate of pay for Corporal Classification will be a minimum of five percent (5%) above the rate of pay for a "Senior Police Officer VI.

A.1.2

Effective January 01, 2008, the rates of pay set forth within Section A.1.1 shall be increased by one hundred percent (100%) of the percentage increase set forth in the Urban Wage Earners and Clerical Workers (CPI-W), All Items Revised Series (1982-84=100) for the Seattle-Tacoma-Bremerton Area for the period from June 2006 to June 2007, as is published by the Bureau

Effective January 01, 2008, the hourly rates of pay for classifications covered by the Agreement (reflect a three point three percent (3.3%) increase) shall be as follows:

Police Officer I	(00 - 12 months)	\$20.47
Police Officer II	(13-24 months)	\$22.32
Police Officer III	(25-36 months)	\$24.82
Police Officer IV	(37-48 months)	\$26.75
Police Officer V	(49-60 months)	\$28.53
Senior Police Officer VI	(61+ months)	\$30.40
Corporal		\$31.93

*The rate of pay for Corporal Classification will be a minimum of five percent (5%) above the rate of pay for a "Senior Police Officer VI.

A.1.3

Lateral entry officers may be appointed to Police Officer based upon their prior service as full-time commissioned police officers, providing it is acceptable both to the Employer and Criminal Justice Training Commission.

A.1.4

Advancement from one Pay Step to a higher Pay Step shall be based on time in service and satisfactory annual performance evaluations for the preceding year. In the event an unsatisfactory rating is received and a Pay Step advancement denied, the employee shall have an additional three (3) months to bring their performance up to standard and thereby earn their Step increase.

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A.3

Education Pay - An employee who has earned a degree in a field of study including police administration, political science, sociology, psychology, law, business administration, education, criminology and other employer approved field of study shall receive additional compensation per month as follows.

	Effective 2006	Effective 2007	Effective 2008
AA degree	\$79.40	\$83.05	\$85.79
BA/BS	\$158.79	\$166.09	\$171.51
MA	\$208.28	\$217.86	\$225.05

The education pay will be adjusted by the formula listed in A.1.1 and A.1.2.

PUBLIC, PROFESSIONAL & OFFICE-
CLERICAL EMPLOYEES AND DRIVERS
LOCAL UNION NO. 763, affiliated with the
International Brotherhood of Teamsters

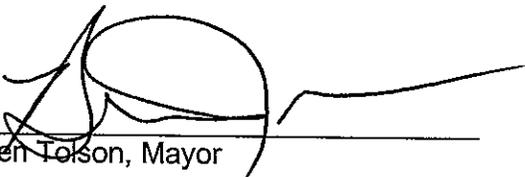
CITY OF SULTAN, WASHINGTON

By



David A. Grage, Secretary-Treasurer

By



Ben Tolson, Mayor

Date

9-10-07

Date

8-27-07

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APPENDIX "A"

Wage scale effective July 1, 2006 through December 31, 2006

A.1 The increase in rates of pay effective July 1, 2006 will be two point three percent (2.3%) which is one hundred percent (100%) of the CPI-U for the period of June 2004 to June 2005.

CLASSIFICATIONS	STEP A 00-12m	STEP B 13-24m	STEP C 25-36m	STEP D 37-48m	STEP E 48-60m	STEP F 61m +
Administrative Secretary	\$13.19	\$14.77	\$16.37	\$17.94	\$19.54	\$21.10
Building Inspector	\$14.06	\$15.45	\$16.84	\$18.25	\$19.65	\$21.03
Custodian	\$13.89	\$14.94	\$16.06	\$17.27	\$18.58	\$19.98
Deputy/Treasurer	\$12.30	\$13.46	\$14.72	\$16.11	\$17.64	\$19.30
Permit Assistant	\$12.30	\$13.46	\$14.72	\$16.11	\$17.64	\$19.30
Planning Associate	\$20.25	\$21.27	\$22.33	\$23.45	\$24.61	\$25.83
Police Records Specialist	\$12.30	\$13.19	\$14.12	\$15.14	\$16.22	\$17.39
Utility Clerk/Receptionist	\$12.30	\$13.19	\$14.12	\$15.14	\$16.22	\$17.39
Utility Worker	\$13.89	\$14.94	\$16.06	\$17.27	\$18.58	\$19.98
Water Systems Manager	\$20.25	\$21.27	\$22.33	\$23.45	\$24.61	\$25.83
Waste Water Treatment Plant Operator	\$13.91	\$15.33	\$16.88	\$18.60	\$20.47	\$20.96
Waste Water Treatment Plant Supervisor	\$20.25	\$21.27	\$22.33	\$23.45	\$24.61	\$25.83
Water Treatment Plant Operator	\$13.91	\$15.33	\$16.88	\$18.60	\$20.47	\$20.96
Receptionist General Office	\$10.31	\$11.04	\$11.82	\$12.64	\$13.53	\$14.49

Effective July 01, 2006, the rates of pay set forth within Section A.1 shall be increased by one hundred percent (100%) of the percentage increase in the "All Urban Consumers Index (CPI-U, All Items Revised Series" (1967=100) for the Seattle-Tacoma-Bremerton Area for the period from June 2004 to June 2005, as is published by the Bureau of Labor Statistics, United States Department of Labor.

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Wage scale effective January 1, 2007 through December 31, 2007

A.2

The increase in rates of pay effective January 1, 2007 will be four point two percent (4.2%) which is one hundred percent (100%) of the CPI-U for the period of June 2005 to June 2006.

CLASSIFICATIONS	STEP A 00-12m	STEP B 13-24m	STEP C 25-36m	STEP D 37-48m	STEP E 48-60m	STEP F 61m +
Administrative Secretary	\$13.74	\$15.39	\$17.06	\$18.69	\$20.36	\$21.99
Building Inspector	\$14.65	\$16.10	\$17.55	\$19.02	\$20.48	\$21.91
Custodian	\$14.47	\$15.57	\$16.73	\$18.00	\$19.36	\$20.82
Deputy/Treasurer	\$12.82	\$14.03	\$15.34	\$16.79	\$18.38	\$20.11
Permit Assistant	\$12.82	\$14.03	\$15.34	\$16.79	\$18.38	\$20.11
Planning Associate	\$21.10	\$22.16	\$23.27	\$24.43	\$25.64	\$26.91
Police Records Specialist	\$12.82	\$13.74	\$14.72	\$15.77	\$16.90	\$18.12
Utility Clerk/Receptionist	\$12.82	\$13.74	\$14.72	\$15.77	\$16.90	\$18.12
Utility Worker	\$14.47	\$15.57	\$16.73	\$18.00	\$19.36	\$20.82
Water Systems Manager	\$21.10	\$22.16	\$23.27	\$24.43	\$25.64	\$26.91
Waste Water Treatment Plant Operator	\$14.49	\$15.97	\$17.59	\$19.38	\$21.33	\$21.84
Waste Water Treatment Plant Supervisor	\$21.10	\$22.16	\$23.27	\$24.43	\$25.64	\$26.91
Water Treatment Plant Operator	\$14.49	\$15.97	\$17.59	\$19.38	\$21.33	\$21.84
Receptionist General Office	\$10.74	\$11.50	\$12.32	\$13.17	\$14.10	\$15.10

Effective January 01, 2007, the rates of pay set forth within Section A.1 shall be increased by one hundred percent (100%) of that percentage increase in the "All Urban Consumers Index (CPI-U, All Items Revised Series" (1967=100) for the Seattle-Tacoma-Bremerton Area for the period from June 2005 to June 2006, as is published by the Bureau of Labor Statistics, United States Department of Labor.

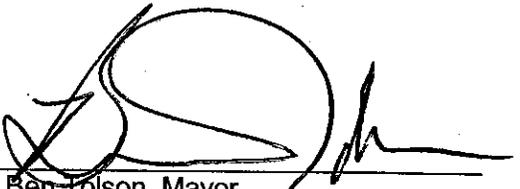
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- A.3 A new employee shall be given credit for prior work experience in computing entry salary. Such experience shall qualify the employee to be placed on the wage schedule up to Step C of the appropriate classification.
- A.4 Advancement from one wage Step to the next within a given classification shall be based on completion of the required months of service in that Step.
- A.5 An employee who is promoted to a higher paid classification shall be placed into the lowest pay Step in the higher classification which provides for a pay increase; provided however, in no event shall an employee receive less than a five percent (5%) pay increase upon promotion.

PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS LOCAL UNION NO. 763, affiliated with the International Brotherhood of Teamsters

CITY OF SULTAN, WASHINGTON

By 
David A. Grage, Secretary-Treasurer

By 
Ben Tolson, Mayor

Date 10-17-06

Date 10/23/06

ATTEST

By 
Laura J. Koenig, City Clerk

Date 10-23-06

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RCW 35A.33.050**Proposed preliminary budget.**

Attachment B

On or before the first business day in the third month prior to the beginning of the fiscal year of a code city or at such other time as the city may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinances, or by the chief administrative officer of the city shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the city for the ensuing fiscal year, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal year, the estimated receipts for the current fiscal year and the estimated receipts for the ensuing fiscal year, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal year.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last completed fiscal year, the appropriations for the current fiscal year and the estimated expenditures for the ensuing fiscal year. The salary or salary range for each office, position or job classification shall be set forth separately together with the title or position designation thereof: PROVIDED, That salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached to and made a part of the budget document.

[1967 ex.s. c 119 § 35A.33.050.]

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Memo

To: Donna Murphy, Grants and Economic Development Coordinator
From: Deborah Knight, City Administrator
CC: Mayor Ben Tolson
Date: 10-01-2007
Re: Salary employee status (Exclusion from FLSA coverage)

Donna,

At this morning's management team meeting, you raised the issue of your status as an "hourly" employee as opposed to a "salaried" employee.

You mentioned that your request to change your status from hourly to salary has not ever been addressed by the city despite your repeated request for review.

Laura mentioned that a position's status as hourly or salary is based on federal law, specifically the Fair Labor Standards Act or FLSA.

The FLSA defines positions as either exempt (exempt from overtime or "salary") or nonexempt (subject to overtime laws – eligible for overtime or "hourly").

The FLSA requires that positions meet certain "tests" to qualify as exempt from overtime. Your position as grants and economic development coordinator may or may not fit the requirements of an exempt administrative job. I have attached the FLSA Exempt Test for you to review.

After you have reviewed the information, please schedule some time with me so we can review the test together and determine if your position meet the criteria of an Administrative Exempt position.

Please contact me if you have any questions.

Deborah

Fair Labor Standards Act Chamberlain, Kaufman



and Jones
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FLSA Coverage

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Coverage under the FLSA

Most jobs are governed by the FLSA. Some are not. Some jobs are excluded from FLSA coverage by statute. Other jobs, while governed by the FLSA, are considered "exempt" from the FLSA overtime rules.

Exclusions from FLSA coverage.

Particular jobs may be completely excluded from coverage under the FLSA overtime rules. There are two general types of complete exclusion. Some jobs are specifically excluded in the statute itself. For example, employees of movie theaters and many agricultural workers are not governed by the FLSA overtime rules. Another type of exclusion is for jobs which are governed by some other specific federal labor law. As a general rule, if a job is governed by some other federal labor law, the FLSA does not apply. For example, most railroad workers are governed by the Railway Labor Act, and many truck drivers are governed by the Motor Carriers Act, and not the FLSA. Many of FLSA exclusions are found in §213 of the FLSA.

Exempt or Nonexempt.

Employees whose jobs are governed by the FLSA are either "exempt" or "nonexempt." Nonexempt employees are entitled to overtime pay. Exempt employees are not. Most employees covered by the FLSA are nonexempt. Some are not.

Some jobs are classified as exempt by definition. For example, "outside sales" employees are exempt ("inside sales" employees are nonexempt). For most employees, however, whether they are exempt or nonexempt depends on (a) how much they are paid, (b) how they are paid, and what kind of work they do.

With few exceptions, to be exempt an employee must (a) be paid at least \$23,600 per year (\$440 per week), and (b) be paid on a salary basis, and also (c) perform exempt job duties. These requirements are outlined in the FLSA Regulations (promulgated by the U.S. Department of Labor). Most employees must meet all three "tests" to be exempt.

Salary level test.

Employees who are paid less than \$23,600 per year (\$455 per week) are nonexempt. (Employees who earn more than \$100,000 per year are almost certainly exempt.)

Salary basis test.

Generally, an employee is paid on a salary basis if s/he has a "guaranteed minimum" amount of money s/he can count on receiving for any work week in which s/he performs "any" work. This amount need not be the entire compensation received, but there must be some amount of pay the employee can count on receiving in any work week in which s/he performs any work. Some "rules of thumb" indicating that an employee is paid on a salary basis include whether an employee's base pay is computed from an annual figure divided by the number of paydays in a year, or whether an employee's actual pay is lower in work periods when s/he works fewer than the normal number of hours. However, whether an employee is paid on a salary basis is a "fact and thus specific evaluation of particular circumstances is necessary. Whether an employee is paid on a salary basis is not affected by whether pay is expressed in hourly terms (as this is a fairly common requirement of many payroll computer programs), but whether the employee in fact has a "guaranteed minimum" amount of pay s/he can count on.

The FLSA salary basis test applies only to reductions in monetary amounts. Requiring an employee to charge absences from work to leave accruals is not a reduction in "pay," because the monetary amount of the employee's paycheck remains the same. Similarly, paying an employee more than the guaranteed salary amount is not normally inconsistent with salary basis status, because this does not result in any reduction in the base pay.

With some exceptions, the base pay of a salary basis employee may not be reduced based on the "quality or quantity" of work performed (provided that the employee does "some" work in the work period). This usually means that the base pay of a salary basis employee may not be reduced if s/he performs less work than normal, if the reason for that is determined by the employer. For example, a salary basis pay employee's base pay may not be reduced if there is "no work" to be performed (such as for a plant closing or slow period), and a salary basis employee's base pay may not be reduced for partial day absences. However, employers may "dock" the base pay of salary basis employees in full day increments, for disciplinary suspensions, or for personal leave, or for sickness under a bona fide sick leave plan (as for example if the employee has run out of accrued sick leave).

Thus, there can be "permissible" and "impermissible" reductions in salary basis pay. Permissible reductions have no effect on the employee's exempt status. Impermissible reductions may, in that the general rule is that an employee who is subjected to impermissible reductions in salary no longer paid on a salary basis, and is therefore nonexempt. However, employers have several avenues by which they can "cure" impermissible reductions in salary basis pay, and as a practical matter these make it unlikely that an otherwise exempt employee would become nonexempt because of salary basis pay problems. The salary basis pay requirement for exempt status does not apply to some jobs (for example, doctors, lawyers and schoolteachers are exempt even if the employees are paid hourly).

The duties tests.

An employee who meets the salary level tests and also the salary basis tests is exempt only if s/he also performs exempt job duties. These FLSA exemptions are limited to employees who perform relatively high-level work. Whether the duties of a particular job qualify as exempt depends on what they are. Job titles or position descriptions are of limited usefulness in this determination. (A secretary is still a secretary even if s/he is called an "administrative assistant" and the chief executive officer is still the CEO even if s/he is called a janitor.) It is the actual job tasks that must be evaluated, along with how the particular job tasks "fit" into the employer's

overall operations.

There are three typical categories of exempt job duties, called "executive," "professional," and "administrative."

Exempt executive job duties.

Job duties are exempt executive job duties if the employee

1. regularly supervises two or more other employees, and also
2. has management as the primary duty of the position, and also,
3. has some genuine input into the job status of other employees (such as hiring, firing, promotions, or assignments).

Supervision means what it implies. The supervision must be a regular part of the employee's job and must be of other employees. Supervision of non-employees does not meet the standard. The "two employees" requirement may be met by supervising two full-time employees or the equivalent number of part-time employees. (Two half-time employees equal one full-time employee.)

"Mere supervision" is not sufficient. In addition, the supervisory employee must have "management" as the "primary duty" of the job. The FLSA Regulations contain a list of typical management duties. These include (in addition to supervision):

- interviewing, selecting, and training employees;
- setting rates of pay and hours of work;
- maintaining production or sales records (beyond the merely clerical);
- appraising productivity; handling employee grievances or complaints, or disciplining employees;
- determining work techniques;
- planning the work;
- apportioning work among employees;
- determining the types of equipment to be used in performing work, or materials needed;
- planning budgets for work;
- monitoring work for legal or regulatory compliance;
- providing for safety and security of the workplace.

Determining whether an employee has management as the primary duty of the position requires case-by-case evaluation. A "rule of thumb" is to determine if the employee is "in charge" of a department or subdivision of the enterprise (such as a shift). One handy clue might be to ask who a telephone inquiry would be directed to if the caller asked for "the boss." Typically, only one employee is "in charge" at any particular time. Thus, for example, if a "sergeant" and a "lieutenant" are each at work at the same time (in the same unit or subunit of the organization) only the lieutenant is "in charge" during that time.

An employee may qualify as performing executive job duties even if s/he performs a variety of "regular" job duties as well. For example, the night manager at a fast food restaurant may in reality spend most of the shift preparing food and serving customers. S/he is, however, still "the boss" even when not actually engaged in "active" bossing duties. In the event that some

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"executive" decisions are required, s/he is there to make them, and this is sufficient.

The final requirement for the executive exemption is that the employee have genuine input into personnel matters. This does not require that the employee be the final decision maker on such matters, but rather that the employee's input is given "particular weight." Usually, it will mean that making personnel recommendations is part of the employee's normal job duties, that the employee makes these kinds of recommendations frequently enough to be a "real" part of the job, and that higher management takes the employee's personnel suggestions or recommendations seriously.

Exempt professional job duties.

The job duties of the traditional "learned professions" are exempt. These include lawyers, doctors, dentists, teachers, architects, clergy. Also included are registered nurses (but not LPN accountants (but not bookkeepers), engineers (who have engineering degrees or the equivalent) and perform work of the sort usually performed by licensed professional engineers), actuaries, scientists (but not technicians), pharmacists, and other employees who perform work requiring "advanced knowledge" similar to that historically associated with the traditional learned professions.

Professionally exempt work means work which is predominantly intellectual, requires specialized education, and involves the exercise of discretion and judgment. Professionally exempt worker must have education beyond high school, and usually beyond college, in fields that are distinguished from (more "academic" than) the mechanical arts or skilled trades. Advanced degrees are the most common measure of this, but are not absolutely necessary if an employee has attained a similar level of advanced education through other means (and perform essentially the same kind of work as similar employees who do have advanced degrees).

Some employees may also perform "creative professional" job duties which are exempt. This classification applies to jobs such as actors, musicians, composers, writers, cartoonists, and some journalists. It is meant to cover employees in these kinds of jobs whose work requires invention, imagination, originality or talent; who contribute a unique interpretation or analysis.

Identifying most professionally exempt employees is usually pretty straightforward and uncontroversial, but this is not always the case. Whether a journalist is professionally exempt, an example, or a commercial artist, will likely require careful analysis of just what the employee actually does.

Exempt Administrative job duties.

The most elusive and imprecise of the definitions of exempt job duties is for exempt "administrative" job duties.

The Regulatory definition provides that exempt administrative job duties are

- (a) office or nonmanual work, which is
- (b) directly related to management or general business operations of the employer or the employer's customers, and

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- (c) a primary component of which involves the exercise of independent judgment and discretion about
- (d) matters of significance.

The administrative exemption is designed for relatively high-level employees whose main job is to "keep the business running." A useful rule of thumb is to distinguish administrative employees from "operational" or "production" employees. Employees who make what the business sells are not administrative employees. Administrative employees provide "support" to the operational or production employees. They are "staff" rather than "line" employees. Examples of administrative functions include labor relations and personnel (human resources employees), payroll and finance (including budgeting and benefits management), records maintenance, accounting and tax, marketing and advertising (as differentiated from direct sales), quality control, public relations (including shareholder or investment relations, and government relations), legal and regulatory compliance, and some computer-related jobs (such as network, internet and database administration). (See Computer employees.)

To be exempt under the administrative exemption, the "staff" or "support" work must be office or nonmanual, and must be for matters of significance. Clerical employees perform office or nonmanual support work but are not administratively exempt. Nor is administrative work exempt just because it is financially important, in the sense that the employer would experience financial losses if the employee fails to perform competently. Administratively exempt work typically involves the exercise of discretion and judgment, with the authority to make independent decisions on matters which affect the business as a whole or a significant part of it.

Questions to ask might include whether the employee has the authority to formulate or interpret company policies; how major the employee's assignments are in relation to the overall business operations of the enterprise (buying paper clips versus buying a fleet of delivery vehicles, for example); whether the employee has the authority to commit the employer in matters which have significant financial impact; whether the employee has the authority to deviate from company policy without prior approval.

An example of administratively exempt work could be the buyer for a department store. S/he performs office or nonmanual work and is not engaged in production or sales. The job involves work which is necessary to the overall operation of the store -- selecting merchandise to be ordered as inventory. It is important work, since having the right inventory (and the right amount of inventory) is crucial to the overall well-being of the store's business. It involves the exercise of a good deal of important judgment and discretion, since it is up to the buyer to select items which will sell in sufficient quantity and at sufficient margins to be profitable. Other examples of administratively exempt employees might be planners and true administrative assistants (as differentiated from secretaries with fancy titles). Bookkeepers, "gal Fridays," and most employees who operate machines are not administratively exempt.

Merely clerical work may be administrative, but it is not exempt. Most secretaries, for example, may accurately be said to be performing administrative work, but their jobs are not usually exempt. Similarly, filing, filling out forms and preparing routine reports, answering telephones, making travel arrangements, working on customer "help desks," and similar jobs are not likely to be high-level enough to be administratively exempt. Many clerical workers do in fact exercise some discretion and judgment in their jobs. However, to "count" the exercise of judgment and discretion must be about matters of considerable importance to the operation of the enterprise as a whole.

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Routinely ordering supplies (and even selecting which vendor to buy supplies from) is not likely to be considered high- enough to qualify the employee for administratively exempt status. There is no "bright line." Some secretaries may indeed be high-level, administratively exempt employees (for example, the secretary to the CEO who really does "run his life"), while some employees with fancy titles (e.g., "administrative assistant") may really be performing nonexempt clerical duties.

Rights of exempt employees.

An exempt employee has virtually "no rights at all" under the FLSA overtime rules. About all an exempt employee is entitled to under the FLSA is to receive the full amount of the base salary any work period during which s/he performs any work (less any permissible deductions). Nothing in the FLSA prohibits an employer from requiring exempt employees to "punch a clock," or work a particular schedule, or "make up" time lost due to absences. Nor does the FLSA limit the amount of work time an employer may require or expect from any employee, on any schedule. ("Mandatory overtime" is not restricted by the FLSA.)

Keep in mind that this discussion is limited to rights under the FLSA. Exempt employees may have rights under other laws or by way of employment policies or contracts.

Rights of nonexempt employees.

Nonexempt employees are entitled under the FLSA to time and one-half their "regular rate" of pay for each hour they actually work over the applicable FLSA overtime threshold in the applicable FLSA work period. (See, "[FLSA Overtime](#)")

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FLSA EXEMPT TEST

Federal law provides that employees may be exempt from the overtime wage provisions of the Fair Labor Standards Act in one of three general categories: EXECUTIVE, ADMINISTRATIVE and PROFESSIONAL.

In order for an employee to qualify as being EXEMPT and thus not be required to be paid at one and one-half his or her regular salary, an employee need only qualify under one of the following exempt categories.

INSTRUCTIONS - Please answer the following questions in each of the three categories.

1. EXECUTIVE - To be considered for being classified as an EXEMPT executive employee, an employee must be paid a weekly salary of \$455 or above; have duties which consist of management of a company or customarily recognized department or subdivision, regularly supervise and direct two or more employees, and must have authority to hire or fire other employees or suggestions as to such are given particular weight. - No

- Questions: 1. Does the employee's primary duty consist of managing a department or subdivision, which has a permanent status and continuing function? Please read the following definitions and examples before answering;

Primary duty means the principal, main, major or most important duty that the employee performs. Consider the following factors.

- a. The relative importance of the exempt duties as compared with other types of duties
- b. The amount of time spent performing exempt work (usually employees who spend more than 50% of their time performing exempt work will satisfy the primary duty requirement but this amount of time is not required).
- c. The employee's relative freedom from direct supervision
- d. The relationship between the employee's salary and the wages paid to other non-exempt workers for the same kind of nonexempt work.
- e. Other _____

Consider the following examples of management activities and circle any that are applicable to the employee;

- a. Activities related to supervising employees such as interviewing, selecting, and training of employees No
- b. Setting and adjusting pay rates and work hours No
- c. Conducting performance appraisals No
- d. Handling employee complaints and grievances No
- e. Disciplining employees No
- f. Functions related to running or servicing a business such as determining the merchandise to be bought, stocked and sold ?
- g. Planning and controlling the budget Yes
- h. Monitoring or implementing legal compliance measures Yes (grants)
- i. Other _____

Please circle: YES NO

2. Does the employee customarily and regularly direct the work of two (2) or more full time employees?

YES NO

3. Does the employee have the authority to hire and fire employees or are the employee's recommendations regarding hiring and firing and advancement (such as reclassifications and promotions) given particular weight?

The following factors should be considered when determining whether an employee's suggestions are given particular weight;

- a. Whether it is part of the employee's job duties to make suggestions and recommendations
- b. The frequency with which suggestions and recommendations are made or requested
- c. The frequency with which the employee's suggestions and recommendations are relied upon
- d. The exempt executive need not have authority to make the ultimate decision. Suggestions and recommendations may be reviewed by a higher level manager
- e. Making an occasional suggestion regarding a change in status of a co-worker does not meet the "particular weight" standard

YES NO

4. Does an employee make their own decision about when to perform duties not listed above while still remaining responsible for the success or failure of business operations?

YES NO



2. ADMINISTRATIVE - To be considered for being classified as an EXEMPT administrative employee, an employee must be paid a weekly salary of \$455 or above; the employee's primary duty is to perform office or non-manual work related to the management policies or general business operations of the employer or the employer's customers; and performs duties that require the exercise of discretion and independent judgement! (As defined in 29 CFR 541.207 (a) this implies that the employee has the authority or power to make an independent choice, free from immediate direction or supervision, with respect to matters of significance.) **THIS IS THE MOST DIFFICULT PART OF THE EXEMPTION TO DEFINE. EXERCISE CAUTION IN ANSWERING QUESTIONS RELATING TO THIS DEFINITION!**

Yes
Yes

1. Does the employee perform work that is directly related to assisting with the running of the business or act as advisors or consultants to their employer's clients or customers?

YES NO

2. Does the employee customarily and regularly exercise discretion and independent judgment?
 Consider and circle applicable factors in determining whether an employee exercises discretion and independent judgment before answering yes or no.
- a. Employee has the authority to make an independent decision free from immediate supervision after comparing and evaluating possible courses of action. Note: An employee can meet this requirement even if their decisions are reviewed and occasionally reversed at a higher level.
 - b. Has authority to formulate, affect, interpret, or implement management policies or operating practices.
 - c. Carries out major assignments in conducting the operations of the business.
 - d. Performs work that affects business operations to a substantial degree.
 - e. Has authority to commit the employer in matters that have significant financial impact.
 - f. Has authority to waive or deviate from established policies and procedures, without prior approval.
 - g. Has authority to negotiate and bind the company on significant matters.
 - h. Provides consultation or expert advice to management; is involved in planning long- or short-term business objectives.
 - i. Investigates and resolves matters of significance on behalf of management.
 - j. Whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.
 - k. Other _____

YES NO

3. Does an employee make their own decision about when to perform duties not listed above while still remaining responsible for the success or failure of business operations?

YES NO

3. **PROFESSIONAL** - To be considered for being classified as an EXEMPT professional employee, an employee must be paid a weekly salary of \$455 or above; have duties requiring advanced or very specialized education and training and require the exercise of discretion and judgement, or; consist of work requiring invention, imagination or talent in a recognized field of artistic or creative endeavor.

1. Does the employee's primary duty consist of work requiring knowledge of an advanced type in a field of science or learning acquired by a prolonged course of specialized intellectual instruction as distinguished from a general academic education? Or; does the employee's work require the use of creativity, invention, or imagination in a recognized field of artistic endeavor?
 Consider the following factors and definitions before answering yes or no;

- a. "Advanced knowledge" means work that is predominately intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment.
- b. An exempt professional employee generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances.
- c. Advanced knowledge cannot be attained at the high school level.
- d. "Prolonged course of specialized intellectual instruction" means that the learned professional exemption is limited to professions where specialized, academic training is a standard prerequisite for entering the profession.

YES NO

2. Is the employee's work predominantly intellectual and varied in character rather than routine mental, manual, mechanical or physical work?

YES NO

3. Does an employee make their own decision about when to perform duties not listed above while still remaining responsible for the success or failure of business operations?

YES NO