

Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers. The salary and salary basis requirements do not apply to bona fide teachers.



INFORMATION

For more information regarding the FLSA
please contact

Human Resources Department
727-344-1611, Ext. 5400 or 5377.

FAIR LABOR STANDARDS ACT (FLSA) (August 25, 2004)

OVERTIME

FREQUENTLY ASKED QUESTIONS

Department of Human Resources
Diocese of St. Petersburg
P.O. Box 40200
St. Petersburg, FL 33743-0200

1. **QUESTION:** What is the Fair Labor Standards Act or FLSA?

ANSWER: The FLSA of 1939 is the law that covers the payment of overtime to employees in private industry, in the public sector, and in non-profit organizations.

2. **QUESTION:** Does the FLSA and its requirement to pay overtime apply to the Catholic Church?

ANSWER: Yes, the law applies to the Catholic Church and all religious entities regardless of faith.

3. **QUESTION:** What does EXEMPT and NON-EXEMPT mean when applied to my job?

ANSWER: EXEMPT means that you are not paid overtime if you work more than 40 hours a week. A salaried EXEMPT employee is paid for doing a job no matter how long it takes to complete the job. An EXEMPT employee is paid a salary and hourly or partial-day deductions are not allowed. There are other stipulations as well.

4. **QUESTION:** How much do I have to make in order to be considered a salaried Exempt employee?

ANSWER: You must make more than \$23,660 per year or \$455 per week; however, salary alone is not sufficient to determine whether you are an Exempt Employee. There is a multi-part test that must be applied before that determination can be made and all conditions must be met. There are three major classifications of jobs that may be considered as exempt from being paid for overtime work. These major job classifications are: **EXECUTIVE, ADMINISTRATIVE, and PROFESSIONAL.**

administration of such matters as 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; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the various subject matter departments; academic counselors and other employees with similar responsibilities.

16. **QUESTION:** What about teachers? How are they classified under the FLSA?

ANSWER: There are two general types of exempt professional employees: learned professionals and creative professionals. Teachers are considered under the FLSA to be learned professionals

To qualify for the learned professional employee exemption, all of the following tests must be met:

- A. The employee must be compensated on a salary fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- B. 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.
- C. The advanced knowledge must be in a field of science or learning; and
- D. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

ANSWER: Secretaries, clerks, bookkeepers, receptionists, maintenance workers, custodial crew, and ground crew personnel.

13. QUESTION: Do NON-EXEMPT employees have to complete time sheets on a weekly basis?

ANSWER: Yes, the record-keeping requirement under the FLSA has always required that all NON-EXEMPT employees complete weekly time sheets—there are no exceptions under any circumstances.

14. QUESTION: I am a Director of Religious Education (DRE). Am I EXEMPT from being paid overtime and can must I account for every hour of my day?

ANSWER: Under the FLSA, DRE's are considered EXEMPT from being paid overtime. They are considered under the ADMINISTRATIVE exemption. DRE's do not have to account for every hour of their day and cannot be docked in increments less than a day. They are salaried employees paid by the job and not by the hour.

15. QUESTION: I am a principal of a high school or a superintendent of schools or a school administrator. Am I considered under the PROFESSIONAL exemption?

ANSWER: No. Again, do not be confused by job titles. These individuals are considered under the ADMINISTRATIVE exemption under the FLSA. Academic administrative functions include operations directly in the field of education, and do not include jobs relating to areas outside the educational field. Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants responsible for

5. QUESTION: OK. I am a secretary in a parish, at the Pastoral Center, or in a school and my pay is more than \$23,660 per year. Am I not eligible for overtime if I work more than 40 hours in a week because I am considered under the ADMINISTRATIVE Exemption under the FLSA?

ANSWER: Remember, job titles do not determine your classification under the FLSA. This fact can be confusing. Don't forget that there is a test that determines if you are not paid overtime. The test for an ADMINISTRATIVE exemption has three parts:

- A. **Pay** must be more than \$23,660 per year or \$455 per week
- B. Your **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; and
- C. Your primary duty includes the exercise of discretion and independent judgment with respect to **matters of significance**

So, you passed only one part of the three-part requirement. This means that you are NOT EXEMPT from being paid overtime.

6. QUESTION: What does Primary Duty mean?

ANSWER: "Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

7. **QUESTION:** What does “Directly Related to Management or General Business Operations” mean?

ANSWER: To meet the “directly related to management or general business operations” requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example from working on a manufacturing production line or selling a product in a retail or service establishment. Work “directly related to management or general business operations” includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet and database administration; legal and regulatory compliance; and similar activities.

8. **QUESTION:** What does “matters of significance” mean?

ANSWER: The term “matters of significance” refers to the level of importance or consequence of the work performed. An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee’s duties may cause serious financial loss to the employer.

9. **QUESTION:** If I am a secretary, or a janitor, or a clerk in the school system, the parish, or at the cemetery who qualifies to be paid overtime, must I be paid time and a half if I volunteer to help out on a project at work which will place me in excess of 40 hours a week? Would this be classified as working off of the clock?

ANSWER: Yes, this example would be considered working off of the clock. Employers should not allow employees to work overtime unless specifically given written permission to do so.

10. **QUESTION:** OK, suppose I worked overtime anyway after my supervisor told me not to because I really needed to get this project finished before Sunday Mass?

ANSWER: If you work overtime without permission, the pastor, the principal, or the supervisor MUST pay you at the rate of time and a half for the time you worked in excess of 40 hours. The employee cannot waive the right for overtime—no exceptions. In this case the supervisor or manager must instruct you to request to work overtime before doing so and you may be disciplined for working unauthorized overtime.

11. **QUESTION:** What if my supervisor says that he or she will compensate me for my overtime work by giving me compensation or “comp time” off?

ANSWER: Substitution of comp time for overtime is not allowed and there are no exceptions under the law.

12. **QUESTION:** What are some of the positions in a church or school setting that would be considered eligible for overtime pay or NON-EXEMPT positions in other words?