

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



SMITH MOORE LLP
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Administrative Exemption From Overtime – Who Qualifies?

Of all the “white collar” exemptions from overtime, the Administrative Exemption is perhaps the most misunderstood. It is also one that frequently catches the eye of Department of Labor investigators during audits.

To be exempt under the Administrative Exemption, the employee’s primary duty must be performing office or non-manual work directly related to management or general business operations. The employee must also exercise “discretion and independent judgment” with respect to “matters of significance.” When making that determination, consider these ten factors set out in the regulations:

Does the employee:

- Have authority to formulate, affect, interpret, or implement management policies or operating practices?
- Carry out major assignments in conducting the operations of the business?
- Perform work that affects business operations to a substantial degree, even if the employee’s assignments are related to operations of a particular segment of the business?
- Have authority to commit the employer in matters that have significant financial impact?
- Have authority to waive or deviate from established policies or procedures without prior approval?
- Have authority to negotiate and bind the company on significant matters?
- Provide consultation or expert advice to management?
- Participate in planning long- or short-term business objectives?
- Investigate and resolve matters of significance on behalf of management?
- Represent the company in handling complaints, arbitrating disputes or resolving grievances?

TIP

The list of factors above is not meant to be an exhaustive list of all the duties that might satisfy the “discretion and independent judgment” requirement. However, these factors are spelled out in the new regulations defining the administrative exemption and are the types of duties investigators will expect to see when reviewing positions you classify under the administrative exemption.



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The firm restricts its practice in the labor and employment area to the representation of management.



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