

Title:	Fair Labor Standards Act (FLSA) Overtime Exemptions	
Purpose:	To establish guidelines and procedures to determine, identify and report employees that are entitled to overtime exemption under the FLSA.	
Issued by:	Classification and Pay	Date: August 23, 2004
References:	Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 207; 29 CFR Part 541; CS Circular 2-04 (10-22-04)	

I. **BACKGROUND**

The Fair Labor Standards Act (FLSA) of 1938 was enacted to provide relief to families by prohibiting employers from taking advantage of employees, including prohibition of child labor. The law also set standards for minimum wage, overtime pay, equal pay, record keeping, and child labor. On February 19, 1985, the U.S. Supreme Court's Garcia decision re-established applicability to all City employees, including those exempted from civil service, hired on personnel services contracts, and enrollees in manpower programs

In April 2004, the U.S. Department of Labor (DOL) established their new FairPay regulations redefining the exemptions from FLSA overtime. The new regulations become effective August 23, 2004.

II. **FLSA OVERTIME REQUIREMENTS**

The FLSA requires that covered employees, unless exempted, be paid not less than one and one-half times their regular rate of pay for all actual hours worked in excess of forty in a workweek. Employees involved in fire protection or law enforcement activities have a higher threshold after which overtime must be paid and they may be paid overtime on a "work period" basis, where the "work period" may be from 7 to 28 consecutive days in length.

In lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of overtime may be provided up to the limit allowed under the regulations.

III. **DEFINITIONS**

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

"Directly and closely related" means work that contributes to or facilitates exempt work.

"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. Factors to consider include, but are not limited to, the relative importance of the duties, amount of time spent performing the work, and the employee's relative freedom from direct supervision.

“Regular rate” means all remuneration for employment except certain payments specifically excluded by the Act itself. Payments which are not part of the regular rate include premium payments for overtime work, contributions to certain employee benefit plans, holiday pay, vacation and sick leave pay, travel expenses, etc.

“Workweek” means a fixed and regularly recurring period of 168 hours during seven consecutive 24-hour periods. The workweek may begin on any day of the week and at any hour of the day established by the employer.

IV. EXEMPTIONS

Certain employees, regardless of civil service status, may be exempted from the overtime provisions of the FLSA. Under the guidelines established by the FLSA, employees are categorized as either “non-exempt” or “exempt”. For administrative purposes, the City designates these categories as “covered” or “not covered”, respectively.

Employees may be considered exempt or not covered by the FLSA overtime provisions if certain tests are met. The exemptions and duties tests are described below.

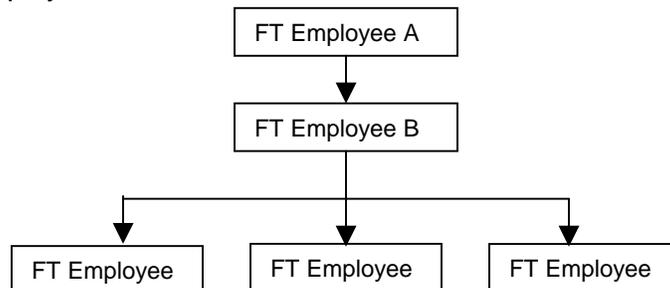
Note: The terminology utilized by the FLSA is different from that currently used in the City. For example, a position assigned to the “professional” bargaining unit (BU 13) may not be covered under FLSA as a “professional”. Similarly, an employee who is exempt from civil service, may not meet the tests for exemption under the FLSA. For additional information regarding exemptions and definitions of the terminology, refer to the US DOL website at <http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm> or 29 CFR Part 541.

A. Executive exemption

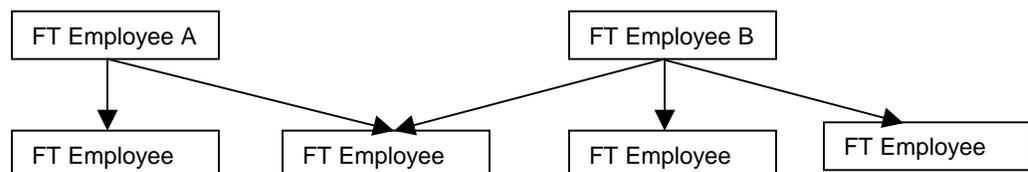
1. To qualify for the Executive exemption, all of the following tests must be met:
 - a) Employee is compensated on a salary basis at a rate not less than \$455 per week;
 - b) Employee’s primary duty involves the management of an enterprise or a recognized department or subdivision;
 - c) Employee customarily and regularly directs the work of two or more other employees or their equivalent (e.g. 2 full time equivalent (FTE)); and
 - d) Employee has the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.
2. Application of exemption tests described above shall be in accordance with the following provisions:
 - a) Departments or subdivisions managed must be a unit with permanent status and a continuing function. Shifts can constitute a department or subdivision. Teams and groups may constitute a department or subdivision, but a case-by-case analysis is required.

- b) Management duties that satisfy this test include, but are not limited to, activities such as:
- i) Interviewing, selecting and training employees;
 - ii) Setting and adjusting pay and work hours;
 - iii) Directing employees' work;
 - iv) Appraising employee productivity and efficiency;
 - v) Handling employee complaints and grievances;
 - vi) Disciplining employees;
 - vii) Planning work and determining the techniques to be used;
 - viii) Apportioning work among employees;
 - ix) Planning and controlling the budget; and
 - x) Monitoring or implementing legal compliance measures.
- c) Direction or supervision of two or more other employees must occur customarily and regularly (i.e., normally and recurrently performed every workweek). Two or more other employees means two full-time employees or their equivalent (FTE). Hours worked by an employee cannot be credited more than once for different executives. Shared responsibility of an employee, or supervision in the absence of another manager does not meet this test.

Example 1: Employee A does not meet "two or more" requirement, but Employee B does meet.



Example 2: Employee A does not meet "two or more" requirement, but Employee B does meet.



- d) To determine whether an employee's suggestions and recommendations are given "particular weight," consider:
- i) If it is part of the employee's job duties to make suggestions and recommendations;
 - ii) The frequency with which they are made; and
 - iii) The frequency with which they are acted upon in decision making.

- e) For this exemption test to be satisfied, the employee must give suggestions and recommendations pertaining to employees whom the employee customarily and regularly directs. Occasional suggestions are not enough to meet this test. In addition, the employee does not need to have the authority to make the ultimate decision.
- f) The phrase “change in status” refers to a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.

B. Administrative exemption

- 1. To qualify for the Administrative exemption, all of the following tests must be met:
 - a) Employee is compensated on a salary basis at a rate not less than \$455 per week;
 - b) Employee’s primary duty involves performing office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
 - c) Employee’s primary duty includes the exercise of discretion and judgment with respect to matters of significance.
- 2. Application of exemption tests described above shall be in accordance with the following provisions:
 - a) Work directly related to “management or general business operations” includes, but is not limited to work in functional areas such as:
 - i) Tax, finance, accounting and auditing, and budgeting;
 - ii) Quality control, purchasing and procurement;
 - iii) Safety and health;
 - iv) Human resources and labor relations;
 - v) Public and government relations;
 - vi) Legal and regulatory compliance; and
 - vii) Computer network, internet and database administration.
 - b) The work must be directly related to assisting with the running or servicing of the business. Work activities are generally administrative rather than production and employees described as staff rather than line.
 - c) Exercise of “discretion and judgment” involves the process of comparing and evaluating possible courses of conduct, and acting or making a decision after various possibilities have been considered. The work includes, but is not limited to:
 - i) Authority to formulate, affect, interpret or implement management policies or operating practices;
 - ii) Carrying out major assignment in conducting business operations;
 - iii) Performing work that affects operations to a substantial degree;
 - iv) Authority to commit employer in matters having significant financial impact;

- v) Authority to waive or deviate from established policies and procedures without prior approval;
- vi) Authority to handle atypical or unusual situations;
- vii) Troubleshooting or problem-solving on behalf of management;
- viii) Authority to negotiate and bind the City on significant matters;
- ix) Providing consultation or expert advice to management;
- x) Planning long- or short-term business objectives; or
- xi) Representing the City in handling complaints, arbitration or resolving grievances.

The work does not include tasks such as, but not limited to:

- i) Applying well-established techniques, procedures, or specific standards described in manuals or other sources;
 - ii) Clerical or secretarial work;
 - iii) Recording or tabulating data; or
 - iv) Performing mechanical, repetitive, recurrent or routine work.
- d) The phrase “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 or because the employee operates very expensive equipment.
- e) Employees who lead a team of other employees assigned to complete major projects for the employer generally meet the duties requirements for the administrative exemption, even if the employee does not have direct supervisory responsibility over the other employees on the team.

C. Learned professional exemption

1. To qualify for the Learned professional exemption, all of the following tests must be met:
 - a) Employee is compensated on a salary basis at a rate not less than \$455 per week; and
 - b) Employee’s primary duty involves performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.
2. Application of exemption tests described above shall be in accordance with the following provisions:
 - a) This exemption encompasses work that is predominately intellectual in character and which includes work requiring the consistent exercise of discretion and judgment. The advanced knowledge is generally used to analyze, interpret or make deductions from varying facts or circumstances. It does not include routine mental, manual, mechanical or physical work, and cannot be attained at the high school level.

- b) Occupations with recognized professional status include, but are not limited to, law, medicine, architecture, engineering, various types of physical sciences, chemical sciences and biological sciences, and other similar occupations.
- c) The “specialized intellectual instruction” requirement restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the occupation.
- d) The exemption does not apply to occupations in which most employees acquire skill by experience, or occupations that may be performed with:
 - i) Only the general knowledge acquired by an academic degree in any field;
 - ii) Knowledge acquired through an apprenticeship; or
 - iii) Training in the performance of routine, mental, manual, mechanical or physical processes.

D. Creative professional exemption

- 1. To qualify for the Creative professional exemption, all of the following tests must be met:
 - a) Employee is compensated on a salary basis at a rate not less than \$455 per week; and
 - b) Employee’s primary duty involves performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
- 2. Application of exemption tests described above shall be in accordance with the following provisions:
 - a) This exemption includes fields such as:
 - i) Music – musicians, composers, conductors, soloists
 - ii) Writing – essayists, novelists, play writers
 - iii) Graphic arts – painters, photographers, cartoonists.
 - b) Typically, the work requires invention, imagination, originality or talent. Exemptions are determined on a case-by-case basis, depending on the extent of the invention, imagination, originality or talent exercised. Work that primarily depends on intelligence, diligence and accuracy or work that can be produced by a person with general manual ability and training are not exempt.

E. Highly compensated employee exemption

- 1. To qualify for the Highly compensated exemption, all of the following tests must be met:
 - a) Employee’s total annual compensation is at least \$100,000 a year;
 - b) Employee performs office or non-manual work; and

- c) Employee customarily and regularly performs one or more of the duties identified in the tests for executive, administrative or professional exemption.

Note: An employee's total annual compensation must include at least \$455 per week paid on a salary or fee basis, and may include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period. It does not include board, lodging, payments for medical and life insurance, contributions to retirement plans and the cost of other fringe benefits.

F. Computer employee exemption

1. To qualify for the Computer employee exemption, all of the following tests must be met:
 - a) Employee is compensated on a salary basis at a rate not less than \$455 per week or if compensated on an hourly basis, not less than \$27.63 per hour;
 - b) Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field; and
 - c) Employee's primary duty involves:
 - i) Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional applications;
 - ii) 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;
 - iii) Design, documentation, testing, creation or modification of computer programs related to machine operating systems;
 - iv) A combination of duties described in F.1.c., i) ii) and iii), the performance of which requires the same levels of skills.
2. The computer employer exemption does not apply to employees engaged in the manufacture or repair of computer hardware and related equipment. Similarly, the exemption does not apply to employees whose work is highly dependent upon, or facilitated by, the use of computers or software, but who are not primarily engaged in computer systems analysis and programming or other similar occupations.

V. EMPLOYEES INELIGIBLE FOR EXEMPTION

Certain employees are ineligible for exemption under FLSA, including:

- A. Blue-collar employees, regardless of how well they are compensated. Blue-collar supervisors, however, may qualify for exemption.
- B. Public safety employees, including but not limited to police officers, fire fighters, ambulance personnel, building inspectors, and investigators, although supervisory employees may qualify for exemption.
- C. Trainees

D. Hourly workers

VI. FLSA DESIGNATIONS

- A. Although FLSA exemptions are based on the work performed by an employee, the City's compensation plans can be used to assist in determining whether a particular employee is covered or not covered. Based on general application of FLSA guidelines, classes in the City's compensation plan have been coded to indicate whether positions assigned to the class may be covered (coded "C") or not covered (coded "N") from FLSA overtime requirements.
- B. These pre-determined codes are guidelines only, and are not applicable if:
1. The employee's actual duties are not accurately depicted by their position description;
 2. The employee's actual duties are not a true reflection of the concept of the class to which it is allocated;
 3. The employee's position is misclassified;
 4. The employee's position is flagged for review;
 5. The employee is not actually performing the duties and responsibilities assigned the position;
 6. The employee or employee's position is not full time; or
 7. The employee is not salaried.

If any of the conditions listed above exist, an individual determination must be made for the affected employee.

- C. A number of classes do not readily lend themselves to blanket FLSA designations. These classes have been coded "R" for review. Employees/positions in these classes must be reviewed individually.

VII. RESPONSIBILITIES

A. Department of Human Resources (DHR)

1. Establish general guidelines for determining employee coverage/exemption under FLSA.
2. Maintain appropriate records of the FLSA status of positions/employees and reason for exemption.
3. Coordinate with, advise and assist departments and agencies in the determination of individual employee coverage/exemption.
4. Review departmental "Determination of Employee FLSA Status" reports.
5. Process the employee's appropriate FLSA status as reported by departments and agencies in the City's Human Resource Management System (CHRMS).

B. Departments and Agencies

1. Ensure position descriptions are maintained, reviewed and updated regularly to maintain currency and accuracy. If position descriptions are not current or accurate, submit, via eforms, a revised position description(s) to DHR.
2. Determine the appropriate FLSA status of the employee on an on-going basis. The FLSA status of employees should be reviewed and updated, if necessary, whenever there are changes in their duties and responsibilities and/or compensation.
 - a) Review the pre-designated FLSA status of the employee's class as determined from the City's compensation plan.
 - b) Review the employee's FLSA status as indicated on their official position description.
 - c) Refer to the attached guidelines to assist in the proper determination of the employee's FLSA status. (Attachment A)
 - d) Report the correct status of the employee by submitting a "Determination of Employee FLSA Status" form (Attachment B) if the appropriate FLSA status differs from that indicated on the official position description or compensation plan if not indicated on the position description).
3. For employees that are deemed not covered (exempt) from FLSA,
 - a) Ensure that the duties and responsibilities described in the official position description support the exemption. If not, submit a (1) revised position description and (2) "Determination of Employee FLSA Status" report (Attachment B).

Note: See Attachment C for instructions for completing the "Determination of Employee FLSA Status" report.

- b) Review the potential changes, if any, in FLSA status resulting from official reassignment of duties in conjunction with reallocation and reorganization requests, even though the request may still be pending or in process. If the pending request would result in the employee being covered under FLSA, forward a "Determination of Employee FLSA Status" report directly to the DHR Classification Specialist assigned to your department
4. Respond to inquiries regarding employee's FLSA status. Make appropriate adjustments, as applicable.
5. Inform employees of their status under FLSA, and of any changes.

DETERMINING FLSA EXEMPTIONS

This is a general guideline in determining exemption based on broad, general interpretation of the FLSA overtime provisions. It is not intended to provide a comprehensive evaluation, cover all situations, identify all exceptions, or provide a definitive interpretation of the FairPay regulations. Please contact the Department of Human Resources, Classification & Pay Division, or refer to the Federal Department of Labor for additional information and clarification in determining FLSA exemptions.

#	Question	Answer		
		Yes	No	
1	<i>Is the employee paid on an hourly basis?</i>	Go to question 17	Go to question 2	
2	<i>Is the employee paid less than \$1971.66 per month (\$455 per week)?</i>	Employee is covered. FLSA code "C"	Go to question 3	
3	<i>Is the employee a blue-collar worker involved in maintenance, construction and similar occupations?</i>	Employee is covered. FLSA code "C"	Go to question 4	
4	<i>Does the employee supervise others?</i>	Go to question 10	Go to question 5	
5	<p><i>Is the employee a "first responder"?</i></p> <p>Answer "yes" if the employee is employed as one of the following:</p> <ul style="list-style-type: none"> a) MPO Recruit, MPO II & II, Metropolitan Detective, Police Helicopter Pilot, Police Matron, PSC b) Fire Fighter Recruit, Fire Fighter I, II & III, Fire Helicopter Pilot c) EMT I & II; EMT III (ambulance personnel only); MESC I d) Water Safety Officer I & II, Water Safety Officer III (rescue personnel only) e) Park Security Aid f) Any other non-supervisory rescue worker 	<p>For Police Sergeants, Lieutenants, Fire Captains, MECS II, and WSO supervisory personnel, go to question #10.</p>	Employee is covered. FLSA code "C"	Go to question 6
6	<p><i>Is the employee a public safety inspector or investigator?</i></p> <p>Answer "yes" if the employee:</p> <ul style="list-style-type: none"> a) Prevents or detects crimes; performs surveillance; pursues, restrains and apprehends suspects; or interviews witnesses; b) Conducts investigations or inspections for violations of law; or prepares investigative reports; or c) Is involved in building, construction, health, sanitation, environmental, or similar type of work. <p>Answer "no" if the inspection or investigative work does not involve public safety.</p>	Employee is covered. FLSA code "C"	Go to question 7	
7	<p><i>Is the employee a technician?</i></p> <p>Answer "yes" if the employee is an engineering technician, drafting technician, laboratory technician, radio technician, veterinary technician, etc.</p>	Employee is covered. FLSA code "C"	Go to question 8	
8	<p><i>Is the employee a "trainee"?</i></p> <p>Answer "yes" if the employee is:</p> <ul style="list-style-type: none"> a) In an internship program; or b) Assigned to a professional class and performs below the journey level. <p>Note: An employee serving a probationary period is not always considered a "trainee". The job the employee is assigned to perform must be at the trainee level.</p>	Employee is covered. FLSA code "C"	Go to question 9	
9	<i>Does the employee's primary (principal, main or most important) duties involve the performance of clerical or secretarial work; recording or tabulating data; or mechanical, repetitive, recurrent or routine work?</i>	Employee is covered. FLSA code "C"	Go to question 13	

#	Question	Answer	
		Yes	No
10	<p>Does the employee customarily and regularly (normally & recurrently) direct the work of two or more (FTE) employees?</p> <p>Notes: 1) Consider only those employees directly supervised. 2) Do not count students or volunteers. Personal services contract employees may be counted if such contract has been approved in lieu of filling a position or if a position is in the process of being filled. 3) An employee may not be double counted. However if an employee actually reports to two or more supervisors partial credit may be given to each supervisor (e.g. .5 FTE per supervisor)</p>	Go to question 11	Go to question 13
11	<p>Does the employee's primary (principal, main or most important) duties involve the management of a recognized department or subdivision?</p> <p>Answer "yes" if: a) The department/subdivision has permanent status and a continuing function; and b) Employee is not directly supervised in performing this duty.</p> <p>Note: "Management" includes, but is not limited to, activities such as: interviewing, selecting and training employees; directing employees' work; appraising employees' productivity and efficiency; handling employee complaints and grievances; disciplining employees; planning work and determining the techniques to be used; apportioning work among employees; planning and controlling the budget; and monitoring or implementing legal compliance measures.</p>	Go to question 12	Go to question 13
12	<p>Does the employee have the authority to hire or fire other employees or his/her recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight?</p> <p>Answer "yes" if: a) It is part of the employee's job to make suggestions and recommendations; and b) Suggestions or recommendations are made frequently or are frequently relied upon.</p> <p>Note: "Change in status" refers to a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.</p>	Employee meets the Executive exemption FLSA code is "N"	Go to question 13
13	<p>Does the employee's primary (principal, main or most important) duties involve performing office or non-manual work directly related to the management or general business operations of the City?</p> <p>Answer "yes" if: a) The employee performs work in functional areas including, but not limited to: tax; finance; accounting; budgeting; insurance; quality control; purchasing; procurement; research; safety and health; human resources; labor relations; public and government relations; legal and regulatory compliance; and computer network, internet and database administration; and b) The employee performs administrative (staff) work rather than production (line) work.</p>	Go to question 14	Go to question 15
14	<p>Does the employee's primary duties include the exercise of discretion and judgment with respect to matters of significance?</p> <p>Answer "yes" if: a) The employee compares and evaluates possible courses of conduct, and acts or makes a decision after the various possibilities have been considered; and b) The employee's discretion & judgment is more than use of skill in applying established, techniques, procedures or standards.</p> <p>Answer "no" if: a) The employee's discretion & judgment involves applying well-established techniques, procedures or specific standards described in manuals or other sources; or b) The employee performs clerical or secretarial work: records or tabulates data; or mechanical, repetitive, recurrent or routine work.</p> <p>Note: "Discretion and judgment" can be evaluated by factors such as, but not limited to, having authority to: formulate, affect, interpret or implement management policies or operating practices; commit employer in matters having significant financial impact; waive or deviate from established policies and procedures without prior approval; negotiate and bind organization on significant matters; plan long-or short-term business objectives; investigate and resolve matters of significance on behalf of management; represent the organization in handling complaints; and arbitrating disputes or resolving grievances.</p>	Employee meets the Administrative exemption FLSA code is "N"	Go to question 15

#	Question	Answer	
		Yes	No
15	<p>Does the employee's primary (principal, main or most important) duties involve performing office or non-manual work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction?</p> <p>Answer "yes" if: a) The work performed requires advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances; b) The work is predominately intellectual in character and requires consistent exercise of discretion and judgment; c) The occupation has recognized professional status (e.g. law, medicine, accounting, engineering, architecture, physical, chemical and biological sciences, etc.); d) The specialized academic training is a standard MQR; and e) The requisite advanced knowledge is typically acquired at a college or university, not community college or technical school.</p> <p>Answer "no" if: a) Most employees in the occupation acquired their skill by experience rather than by advanced specialized intellectual instruction. b) The advanced knowledge can be acquired through apprenticeship or with training in the performance of routine metal, manual, mechanical or physical processes</p>	Employee meets the Learned Professional exemption. FLSA code "N"	Go to question 16
16	<p>Does the employee's primary (principal, main or most important) duties involve performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor?</p> <p>Answer "yes" if: a) The occupation is in the field of music, writing, acting and graphic arts; b) The work performed varies widely; and c) The extent of the invention, imagination, originality or talent exercised by the employee is significant. (E.g. Copyists do not typically exercise significant imagination, originality or talent; TV reporters who simply report the news and do not typically exercise significant imagination or originality.)</p>	Employee meets the Creative Professional exemption. FLSA code "N"	Go to question 18
17	Is the employee compensated on an hourly basis, at a rate not less than \$27.63 an hour?	Go to question 18	Employee is covered. FLSA code "C"
18	Is the employee employed as a data processing systems analyst, computer systems analyst, computer programmer, software engineer or other similarly skilled working in the computer field?	Go to question 19	Go to question 20
19	<p>Does the employee's primary (principal, main or most important) duties involve: (1) Application or systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional applications; <u>or</u> (2) 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; <u>or</u> (3) Design, documentation, testing, creation or modification of computer programs related to machine operating systems; <u>or</u> (4) A combination of the above, the performance of which requires the same level of skills?</p> <p>Answer "no" if: a) The employee is a technician; b) The work primarily involves the manufacture or repair of computer hardware and related equipment; or c) The work is highly dependent upon or facilitated by the use of computers and software programs (e.g. engineers, drafters and others skilled in CAD) but not engaged in systems analysis and programming.</p>	Employee meets the Computer Employee exemption. FLSA code "N"	Employee is covered FLSA code "C"
20	Is the employee's total annual compensation at least \$100,000 and performs office or non-manual work?	Go to question 21	Employee is covered. FLSA code "C"
21	Does the employee meet <u>at least one</u> of the tests noted in questions #10 through #16?	Employee meets the Highly Compensated Employee exemption. FLSA code "N"	Employee is covered. FLSA code "C"

<input type="checkbox"/> Learned Professional	<input type="checkbox"/> Primary duty is the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. Field of science or learning: Describe the work that requires advanced knowledge, including consistent exercise of discretion and judgment:												
<input type="checkbox"/> Creative Professional	<input type="checkbox"/> Primary duty involves performing work requiring invention, imagination, originality or talent. Briefly describe the invention, imagination, originality or talent required in performing the job.												
<input type="checkbox"/> Meets both tests for Highly Compensated Employee Exemption	<input type="checkbox"/> Total annual compensation at least \$100,000 per year. <input type="checkbox"/> Performs one or more of the duties identified in <input type="checkbox"/> Executive exemption <input type="checkbox"/> Administrative exemption <input type="checkbox"/> Professional exemption (Identify the duty/duties performed in the appropriate exemption section(s) above.)												
<input type="checkbox"/> Computer employee	<input type="checkbox"/> Primary duty includes: <input type="checkbox"/> Application of system analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications <input type="checkbox"/> Design, development, analysis, creating, testing or modifying computer systems or programs, including prototypes, based on and related to user or system design specifications <input type="checkbox"/> Design documentation, testing, creating or modifying computer systems related to machine operating systems <input type="checkbox"/> A combination of the duties described above, the performance of which requires the same level of skills. Exemption does not include those engaged in the manufacture or repair of computer hardware and related equipment or those whose work is highly dependent upon, or facilitated by, the use of computers or software, but who are not primarily engaged in computer systems analysis and programming or other similar occupations.												
Supporting justification or additional comments:													
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Instructions for completing the “Determination of Employee FLSA Status” Form DHR-C&P-57 (8-04)

Prior to completing this form, review the Fair Labor Standards Act (FLSA) overtime exemption guidelines. Do not attempt to complete this form if you do not understand the general concepts of the exemptions provided by the FLSA, the terminology utilized by the FLSA, and have not been provided training in FLSA.

- 1) **Identify the position number, class title and salary range of the position.**
- 2) **Indicate whether the position/employee should be FLSA “covered” or “not covered”.** Your determination may be either based on the FLSA guidelines, or by completing the rest of this form first, then making your selection later.
- 3) **If the position/employee is FLSA “covered”, indicate the reason for coverage.** If you select “other”, provide explanation in the space provided on the second page. Make this determination based on the FLSA guidelines.
- 4) **If the position/employee is FLSA “not covered”, indicate the type of exemption.** Your determination may be either based on the FLSA guidelines, or by completing the rest of this form first, then making your selection later.
- 5) **“Executive” section:**
 - a. Indicate whether the position’s/employee’s primary duty is “management of a department or subdivision thereof”. Reminder: general rule of thumb in determining primary duty is 50% or more of the work time.
 - i. Provide the name of the department or subdivision managed.
 - ii. Indicate the types of management functions assigned to the position and performed by the employee. At least three of these functions must be performed to justify that the position/employee is involved in management functions. However, the listing provided is not all encompassing. If the position/employee performs other functions similar in scope, provide an explanation in the space provided on the second page.
 - b. Indicate whether position/employee “customarily and regularly” directs the work of 2 or more FTE employees.
 - i. List the position numbers, titles and salary ranges of the positions/employees directly supervised.
 1. If the position/employee shares supervision of the subordinate with another position/employee, provide the percentage amount of supervision provided (e.g., 50%).
 2. If the position/employee supervised is less than full-time, indicate the FTE equivalent.
 - c. Indicate whether the position’s/employee’s recommendations pertaining to “changes in employee status” are given “particular weight”.
 - d. If the position/employee meet all the tests described in 5a, b & c above, the position/employee qualifies for the “Executive” exemption and is “not covered” by the FLSA.

6) **“Administrative” section:**

- a. Indicate whether the position’s/employee’s primary duty is the performance of office or non-manual work directly related to the management or general business operations of the City. Reminder: general rule of thumb in determining primary duty is 50% or more of the work time.
 - i. Indicate which area the position/employee is responsible for. Work in one of the areas listed must be performed to meet this test.
- b. Indicate whether the position’s/employee’s primary duty includes the “exercise of discretion and independent judgment” with respect to “matters of significance”.
 - i. Indicate which duties and responsibilities are assigned to the position and performed by the employee. The position/employee must be responsible for at least three duties and responsibilities listed. However, this listing is not all encompassing. If the position/employee performs other functions similar in scope, provide an explanation in the space provided on the second page.
- c. Indicate whether the position/employee compares and evaluates possible courses of conduct and acts or makes a decision after the various possibilities have been considered and has the authority to make an independent choice, free from immediate direction or supervision.
- d. If the position/employee meet all the tests described in 6a, b & c above, the position/employee qualifies for the “Administrative” exemption and is “not covered” by the FLSA.

7) **“Learned professional” section:**

- a. Indicate whether the position’s/employee’s primary duty is the performance of work requiring “advanced knowledge” in a field of science or learning customarily acquired by a prolonged course of specialized instruction. Reminder: general rule of thumb in determining primary duty is 50% or more of the work time.
 - i. Indicate the field of science or learning required by the position/employee to perform the assigned work.
 - ii. Describe the work that requires advanced knowledge and includes consistent exercise of discretion and judgment.
- b. If the position/employee meets the test described in 7a above, the position/employee qualifies for the “Learned professional” exemption and is “not covered” by the FLSA.

8) **“Creative professional” section:**

- a. Indicate whether the position’s/employee’s primary duty involves performing work requiring invention, imagination, originality or talent. Reminder: general rule of thumb in determining primary duty is 50% or more of the work time.
 - i. Describe the invention, imagination, originality or talent required to perform the work.
- b. If the position/employee meets the test in 8a above, the position/employee qualifies for the “Creative professional” exemption and is “not covered” by the FLSA.

9) **“Highly compensated employee” section:**

- a. Indicate if the employee’s total annual compensation is at least \$100,000 per year.
- b. Indicate if the employee performs one or more of the duties and responsibilities identified in the “Executive”, “Administrative”, “Learned professional” or “Creative professional” exemptions.

- i. Indicate in the appropriate exemption section, the duty/duties or responsibility/responsibilities performed by the employee.
 - c. If the employee meets the tests in 9a & b above, the employee qualifies for the “Highly compensated employee” exemption and is “not covered” by the FLSA.
- 10) **“Computer Employee” section:**
 - a. Indicate whether the position’s/employee’s primary duty includes one of the four functional areas listed.
 - i. Indicate one which of the four functional areas describes the work assigned the position and performed by the employee.
 - b. If the employee meets the tests in 10a above, the employee qualifies for the “Computer employee” exemption and is “not covered” by the FLSA.
- 11) **Provide supporting justification or additional comments as required.**
- 12) **Complete the “Department” section:**
 - a. Provide contact person’s name. The contact person should be the person who completed the form or someone knowledgeable about the form and position/employee to respond to inquiries, complaints and questions regarding the information provided and the FLSA determination made.
 - b. Provide contact person’s phone number.
 - c. Provide the name of the department.
 - d. Submit through appropriate channels for Departmental Head or Authorized Representative’s signature.
 - e. Provide the date the form was signed.
- 13) **Submit all completed and signed reporting forms to the Department of Human Resources.** The form can be submitted via one of the following methods:
 - a. Scan the form (2 sides) and email to the “DHR Mailbox”.
 - b. Send via interdepartmental mail to “DHR Attn: C&P”.
 - c. If submitting this form in conjunction with a revised position description, reallocation action or to create a position, send as an attachment to the B129 or B130 eform.
- 14) **Questions** regarding this form should be addressed to your Departmental Personnel Officer, Administrative Services Officer, or other designated person in your department.