

# COMPARISON OF FLSA AND CTDOL “WHITE-COLLAR” EXEMPTION REGULATIONS

	<b>FLSA</b>	<b>CTDOL</b>
<b>Basic Requirements for All “White-Collar” Exemptions:</b>	<p>(1) Salary Basis; and (2) Duties Test</p> <p><b>Must Meet <i>Both</i> Prongs</b></p>	<b>Same as FLSA</b>
<b>Salary Basis Definition</b>	<p><u>29 CFR § 541.118(a)</u> <u>Definition:</u> employee must receive his <i>full</i> predetermined salary amount for any week in which he performs <i>any</i> work; such amount is <i>not subject to reduction</i> because of variations in the <i>quality</i> or <i>quantity</i> of work performed</p>	Same as FLSA; <i>see</i> Conn. State Agencies Regulations § 31-60-14 Definition:
<b>Salary Threshold Amounts</b>	<p>Paid on salary or fee basis [no fee basis for executive exemption] of:</p> <p style="text-align: center;">≥ \$455 per week;</p> <p><b>Increased</b> from:</p> <p>(1) \$155 long test; (2) \$250 short test.</p> <p><b><u>Practical Effect:</u></b></p> <p><b>Consolidated into <i>single</i> threshold amount – no longer has a long test.</b></p>	<p><b><u>Short Test:</u></b> paid on salary or fee basis [no fee basis for executive] of ≥ \$475 per week</p> <p style="text-align: center;"><b>OR</b></p> <p><b><u>Long Test:</u></b> (1) paid on salary or fee basis [no fee basis for executive] of ≥ \$400 per week;</p> <p><b><u>Practical Effect:</u></b></p> <p><b>CT retains 2 tests, but it Essentially <i>eliminates</i> CT Long Test.</b></p>

Practical Applications of Salary Thresholds:	FLSA	CTDOL
NO EXEMPTIONS	<\$455 No exemptions permitted until salary reaches \$455.	The CT \$400 <i>long test</i> <b>becomes moot</b> because FLSA is more protective (i.e., no exemptions) up to \$455.
<p><b>No Man’s Land:</b> ≥ \$455, but &lt;\$475</p> <p><b>FLSA Single Test</b> v. <b>CTDOL “long test”</b></p> <p><b>The more protective law applies?</b> (Depends on duties test analysis.)</p>	<p>FLSA “single test” applies because salary &gt;\$455.</p> <p style="text-align: center;">⇒</p>	<p>The CT “long test” applies because salary &gt; \$400</p> <p>Generally, CT “long test” will be more protective (more factors) and thus will apply.</p>
<p>&gt;\$475</p> <p><b>FLSA Single Test</b> v. <b>CTDOL “short test”</b></p> <p><b>Which law is more protective after duties test analysis?</b></p> <p><b>Practical Advice:</b> Less risky to pay the \$475 than the uncertainty that \$455 brings.</p>	<p>Exceeds \$455 threshold</p> <p>FLSA duties test applies</p> <p>Should be equally protective. ⇒</p>	<p>Exceeds \$475 “short test” threshold.</p> <p>CTDOL “short test” duties apply</p> <p>⇐ Should be equally protective.</p>
Duties Tests	Dependent on Exemption Type	Same as FLSA
Types of “White Collar” Exemptions	<p>(1) Executive; (2) Administrative; (3) Professional; (4) Outside Sales; and ----- (5) <b>Computer Employees</b></p>	<p>(1) Executive; (2) Administrative; (3) Professional; and (4) Outside Sales.</p> <p><b>***No exemption for computer employees***</b></p>

<p><b>“Blue Collar” Workers: (No Exemptions Applicable)</b></p>	<ul style="list-style-type: none"> <li>▪ Exemptions apply only to “white collar” employees who meet salary and duties tests.</li> <li>▪ Exemptions do <i>not</i> apply to workers who do repetitive work with their hands, physical skill and energy <i>no matter how highly paid they might be.</i></li> </ul> <p><i>Examples:</i> Non-management carpenters, electricians, mechanics, plumbers, iron workers, construction workers and longshoremen.</p>	<p>Same as FLSA</p>
<p><b>Police, Firefighters Paramedics &amp; First Responders No Exemptions</b></p>	<p>FLSA Exemptions do <b>not</b> apply to police, firefighters, paramedics and first responders.</p> <p><b>However</b>, Section 7(k) provides for <b>partial</b> exemption in 2 respects:</p> <ol style="list-style-type: none"> <li>(1) permits higher hourly standards before requiring overtime pay; and</li> <li>(2) permits overtime hours to be computed over a work period selected by the employer, which may be longer than a workweek.</li> </ol>	<p><b><u>Police/Firefighters:</u></b> Statutory Exemption for permanent, uniformed employees of a municipality pursuant to Conn. Gen. Stat. § 31-76i(1).</p> <p><b><u>Exception:</u></b> CTDOL will enforce a collective bargaining agreement that provides for overtime.</p> <p><b><u>First Responders:</u></b> CTDOL does <i>not</i> address this classification of employees; thus, are considered non-exempt.</p>
<p><b><i>Compensatory Time for Government Employees</i></b></p>	<p>Section 7(o) permits states and local governments to agree with employees that compensatory time off may be provided in lieu of monetary payment.</p> <p><b><u>Compensatory Time Rate:</u></b> Compensatory time must be</p>	<p>Same as FLSA for <b><i>municipal</i></b> employees; <i>see</i> Conn. Gen. Stat. § 7-460c.</p>

	awarded at rate of at least 1.5 hours for each hour of overtime worked.	
<p style="text-align: center;"><b>Permissible “Docking” Practices</b></p> <p><b><u>Practical Effect:</u> Employer can make deductions to salary without losing the exemption.</b></p>	<p><b><u>Seven Deductions:</u></b></p> <p>(1) one or more <i>full</i> days for <i>personal reasons</i> (other than sickness or accident);</p> <p>(2) one or more <i>full</i> days for <i>sickness or disability after</i> sickness or disability leave has been <i>exhausted</i> pursuant to <i>bona fide</i> plan;</p> <p>(3) <i>Offset</i> for <i>jury duty, witness fees, and military duty</i>;</p> <p>(4) one or more <i>full</i> days for violation of <i>safety</i> rules of <i>major</i> significance;</p> <p>(5) <i>First and last weeks</i> of employment;</p> <p>(6) FMLA Leave – even &lt; full day; and</p> <p>-----</p> <p>(7) <i>Unpaid disciplinary suspensions of 1 or more full days for violating workplace rules, e.g. sexual harassment policy.</i></p>	<p>Same as the FLSA <u>except</u> no #7.</p>
<p style="text-align: center;"><b>Fee Basis</b></p>	<p>Administrative, professional and computer (<i>not executive</i>) employees may be paid on a fee basis rather than on a salary basis.</p> <ul style="list-style-type: none"> <li>▪ Agreed fee is paid for a unique single job, regardless of time required for job’s completion.</li> <li>▪ To determine if fee meets minimum salary requirements, <i>the test is</i></li> </ul>	<p>Applies to <i>administrative</i> and <i>professional</i> exemptions <i>only</i>.</p> <p>Same FLSA requirements.</p>

	<p><i>to consider the total time worked on the job, and determine whether the fee is at a rate that would amount to at least \$455 a week if employee worked 40 hours.</i></p>	
<p><b>Outside Sales Exemption</b></p>	<p>New regulations do <i>not</i> change current treatment.</p> <p><b>Both</b> must be met to qualify for exemption:</p> <ul style="list-style-type: none"> <li>▪ Employee’s primary duty must be making sales or obtaining orders or contracts; <b>and</b></li> <li>▪ Employee must be customarily and regularly engaged away from employer’s place(s) of business.</li> </ul> <p>The salary requirements of the regulation do <i>not</i> apply to this exemption.</p>	<p>Same as FLSA; <i>see</i> Conn. Gen. Stat. § 31-76i(f).</p>
<p><b>Highly Compensated Employees</b></p>	<p>Paid total annual compensation of <math>\geq</math><b>\$100,000</b> (at least \$455 weekly salary) are <b>exempt</b> from FLSA requirements if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee.</p> <p><b>***This exemption does not apply to “blue collar” workers.***</b></p>	<p><b>No such exemption</b> exists for this class of employees</p>

<p style="text-align: center;"><b>Executive Exemption Duties Test</b></p>	<p>FLSA § 13(a)(1); 29 CFR Part 541</p> <p><u>Duties Tests Focuses on</u> <b><u>Primary Duty:</u></b></p> <p>(1) must manage enterprise, department or subdivision; <b>and</b></p> <p>(2) must customarily and regularly direct work of ≥ 2 F/T employees; <b>and</b></p> <p>(3) must have authority to hire and fire.</p> <p><b><u>Business Owner Exemption:</u></b> Any employee who owns at least 20% equity interest in enterprise <b>and</b> is actively engaged in its management <b>is exempt</b> as an executive employee.</p>	<p>Conn. Gen. Stat. § 31-76i(e); Conn. State Agencies Regulations §31-60-14</p> <p><u>Duties Tests Dependent On Salary Amount Paid:</u></p> <p><u>Short Test (&gt; \$475 Salary):</u></p> <p>(1) same as FLSA; <b>and</b></p> <p>(2) same as FLSA.</p> <p>[(3) no hire and fire duty]</p> <p><u>Long Test (&gt; \$400 Salary):</u></p> <p>(1) same as FLSA; <b>and</b></p> <p>(2) same as FLSA; <b>and</b></p> <p>(3) same as FLSA; <b>and</b></p> <p>(4) customarily and regularly exercises discretionary powers; <b>and</b></p> <p>must not devote more than 20% (40% for retail or service employee) of time to duties not related to Nos. 1 to 4 above.</p> <p><b>CTDOL Enforcement Practice: same as FLSA “Business Owner Exemption”</b></p>
<p style="text-align: center;"><b>Administrative Exemption Duties Tests</b></p>	<p>FLSA § 13(a)(1); 29 CFR Part 541</p> <p><u>Duties Tests Focuses on</u> <b><u>Primary Duty:</u></b></p> <ul style="list-style-type: none"> <li>▪ must be performance of office or non-manual work directly related to the management or general business</li> </ul>	<p>Conn. Gen. Stat. § 31-76i(e); Conn. State Agencies Regulations §31-60-15</p> <p><u>Duties Tests Dependent On Salary Amount Paid:</u></p> <p><u>Short Test (&gt; \$475 Salary):</u></p> <p>(1) same as FLSA; <b>and</b></p>

	<p>operations of the employer; <b>and</b></p> <ul style="list-style-type: none"> <li>▪ must include the exercise of discretion and independent judgment on significant matters.</li> <li>▪ <b><u>Examples:</u></b> Tax and financial consultants, accounting, budgeting, auditing, insurance, advertising, loan officers, team leaders who are not supervisors, etc.</li> </ul> <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>▪ must be the performance of administrative functions directly related to academic instruction or training in an educational establishment.</li> <li>▪ <b><u>Examples:</u></b> Superintendents of school systems, assistants responsible for curriculum, principals and vice-principals, and department heads.</li> </ul>	<p>(2) same as FLSA. [(3) no hire and fire duty]</p> <p><b><u>Long Test (&gt; \$400 Salary):</u></b> Primary duty must be:</p> <p>(1) performance of office or non-manual work directly related to management policies or general operations of his employer; <b>OR</b> performance of functions in the administration of a school system in work directly related to academic instruction or training; <b>and</b></p> <p>(2) must customarily and regularly exercise discretion and independent judgment; <b>and</b></p> <p>(3) must regularly and directly assist a proprietor or an employee employed in an executive or administrative capacity; <b>OR</b> Must perform under only general supervision work along specialized or technical lines requiring special training, knowledge or experience <b>OR</b> Must execute under only general supervision special assignments and tasks; <b>and</b></p> <p>(4) must not devote more than 20% (40% for retail or service employee) of time to</p>
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		duties not related to Nos. 1 to 3 above.
<p align="center"><b>Professional Exemption Duties Tests</b></p>	<p>FLSA § 13(a)(1); 29 CFR Part 541</p> <p><b><u>Two Types of Exempt Professional Employees:</u></b></p> <p>(1) <b><u>Learned Professional:</u></b>  Primary Duty must be in the performance of work requiring advanced knowledge;</p> <p>Advanced knowledge must:</p> <ul style="list-style-type: none"> <li>▪ Be predominantly intellectual in character; <b>and</b></li> <li>▪ Require the consistent exercise of discretion and judgment; <b>and</b></li> <li>▪ be in a field of science or learning; <b>and</b></li> <li>▪ be customarily acquired by a prolonged course of specialized intellectual instruction.</li> </ul> <ul style="list-style-type: none"> <li>▪ <b><u>Examples:</u></b>  Lawyer (but not paralegal), Doctor, registered nurse (but not licensed practical nurse), accountants, chefs, actuaries, engineers, architects, funeral directors, and embalmers.</li> </ul> <p>(2) <b><u>Creative Professional:</u></b>  Primary Duty must be the performance of work</p>	<p>Conn. Gen. Stat. § 31-76i(e); Conn. State Agencies Regulations §31-60-16</p> <p><u>Duties Tests Dependent On Salary Amount Paid:</u></p> <p><u>Short Test (&gt; \$475 Salary):</u>  Primary Duty is <b>either:</b></p> <p>(1) performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study;  <b>OR</b>  teaching, instructing or imparting knowledge while employed as a teacher certified in the school system; <b>and</b></p> <p>(2) must require the consistent exercise of discretion and judgment;  <b>OR</b>  must require invention, imagination or talent in a recognized field of artistic endeavor.</p> <p><u>Long Test (&gt; \$400 Salary):</u>  (1) primary duty must consist of :  <ul style="list-style-type: none"> <li>▪ #1 of short test (alternative test); <b>or</b></li> </ul> </p>



	<p>requiring invention, imagination, originality or talent in a recognized field of artistic endeavor.</p> <p><b><i>Examples:</i></b> Actors, musicians, composers, painters, writers, cartoonists, essayists, novelists, etc.</p>	<ul style="list-style-type: none"> <li>▪ work that is original and creative in a recognized field of artistic endeavor; <b><i>and</i></b></li> <li>(2) requires the consistent exercise of discretion and judgment; <b><i>and</i></b></li> <li>(3) requires work which is predominantly intellectual and varied in character the result of which cannot be standardized in relation to a given time period; <b><i>and</i></b></li> <li>(4) must not devote more than 20% of time to duties not related to Nos. 1 to 3 above.</li> </ul>
<b>Computer Employee Exemption</b>	<p>FLSA § 13(a)(1) and 13(a)(17); 29 CFR Part 541</p> <p>Compensated <b><i>either</i></b> by:</p> <ul style="list-style-type: none"> <li>▪ ≥ \$455 salary or fee basis per week; <b>OR</b></li> <li>▪ ≥ \$27.63 per hour (if paid on hourly basis)</li> </ul>	<b><i>No such exemption</i></b> for this class of employees
<b>Computer Employee Duties Tests</b>	<p>Focus on <b><i>Primary Duty</i></b> which must consist of :</p> <p>(1) the application of systems analysis techniques and procedures to determine system functional specifications; <b><i>or</i></b></p> <p>(2) the design, development, etc. of computer systems or programs; <b><i>or</i></b></p> <p>(3) the design, testing modification, etc. of computer programs related machine operating systems; <b><i>or</i></b></p>	

	<p>(4) a combination of the duties described in Nos. (1) to (3) above.</p> <p><b><i>Examples:</i></b> Computer system analysts, programmers, software engineers, etc.</p> <p><b><i>Does not include</i></b> employees engaged in manufacture or repair of computer hardware and related equipment.</p>	
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