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AUDIT YOUR COMPANY'S COMPLIANCE WITH THE FLSA'S STANDARDS FOR EXEMPT V. NON-EXEMPT EMPLOYEE STATUS

To be considered exempt from the overtime requirement, an employee usually must be paid on a “salary basis” rather than on an hourly basis (there is an exception for computer professionals) and the employee’s job duties must meet the United States Department of Labor’s standards for one of the following six exemption categories: executive, administrative, learned professional, creative professional, computer professional, and outside sales. Being paid on a “salary basis” means the employee receives a predetermined amount of pay each pay period, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. For example, subject to certain exceptions, if an employee works 5 hours in one week and 45 hours in the next week, the employee must be paid the same amount for each of these two weeks to satisfy the salary basis test. If an employee does not meet *both* the salary basis test and the job duties test, the employee is not exempt and is entitled to be paid for any and all overtime work.

Please note that the Fair Labor Standards Act as a whole, and in particular the determination of exempt v. non-exempt status, is very complex and a complete description of all the issues relating to this determination is beyond the scope of this Self-Audit Form. Rather, this Form is intended as a summary of the factors that must be considered when determining the exempt or non-exempt status of your employees. Therefore, you should consult with legal counsel when making this determination.

Please use the following pages to self-audit whether your company is properly classifying its employees as exempt.

1. Executive Employee

Answer the following questions to determine whether you have misclassified an employee as an exempt executive employee:

	Yes	No	Not Sure
1. Is the employee paid the equivalent of at least \$455 per week (or \$23,660 per year) on a salary basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the employee's primary duty to manage the enterprise or a customarily recognized department or subdivision of the enterprise?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the employee customarily and regularly direct the work of two or more other employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Does the employee have the authority to hire or fire or, if not authorized to make the final decision, is the employee's recommendations as to the hiring, firing, advancement, promotion, or any other change of status given particular weight?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "No" or "Not Sure" to any of these questions, your employee may have been misclassified as an exempt executive.

Note: If the employee owns at least a 20% equity interest in the enterprise and meets requirements #2 and #3 above, the employee need not meet the salary requirement in #1 or the authority requirement in #4.

2. Administrative Employee

Answer the following questions to determine whether you have misclassified an employee as an exempt administrative employee:

	Yes	No	Not Sure
1. Is the employee paid the equivalent of at least \$455 per week (or \$23,660 per year) on a salary basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the employee's primary duty to perform office or non-manual work directly related to the management or general business operations of the employer or the employer's customers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the employee's primary duty include the exercise discretion and independent judgment with respect to matters of significance? In other words, does the employee compare and evaluate possible courses of action and then make a decision or recommendation after considering the various possibilities without any immediate supervision or direction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "No" or "Not Sure" to any of these questions, your employee may have been misclassified as exempt administrative.

3. Learned Professional Employee

Answer the following questions to determine whether you have misclassified an employee as an exempt learned professional employee:

	Yes	No	Not Sure
1. Is the employee paid the equivalent of at least \$455 per week (or \$23,660 per year) on a salary basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the employee's primary duty to perform work (a) requiring advanced knowledge, (b) in a field of science or learning, and (c) customarily acquired by a prolonged course of specialized intellectual instruction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the advanced knowledge obtained by completing an academic course of study resulting in a four-year college degree or leading to certification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "No" or "Not Sure" to any of these questions, your employee may have been misclassified as an exempt learned professional.

4. Creative Professional Employee

Answer the following questions to determine whether you have misclassified an employee as an exempt creative professional employee:

	Yes	No	Not Sure
1. Is the employee paid the equivalent of at least \$455 per week (or \$23,660 per year) on a salary basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the employee's primary duty to perform work requiring invention, imagination, originality or talent in a recognized field of artistic endeavor such as music, writing, acting and the graphic arts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the work require more than intelligence, diligence and accuracy (i.e., does it require "talent")?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "No" or "Not Sure" to any of these questions, your employee may have been misclassified as an exempt creative professional.

5. Computer Professional

Answer the following questions to determine whether you have misclassified an employee as an exempt computer professional employee:

	Yes	No	Not Sure
1. Is the employee paid at least \$455 per week (or \$23,660 per year) on a salary or fee basis or, if paid hourly, at a rate of not less than \$27.63 per hour?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the employee's primary duty to:			
• Apply system analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Design, develop, document, analyze, create, test or modify computer systems or programs, including prototypes, based on and related to user or system design specifications; or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Design, document, test, create or modify computer programs related to machine operating systems; or			
• Perform a combination of the aforementioned duties requiring the same level of skills?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "No" or "Not Sure" to #1, or were unable to answer "Yes" to any parts under #2, your employee may have been misclassified as an exempt computer professional.

6. Outside Sales Employee

Answer the following questions to determine whether you have misclassified an employee as an exempt outside sales employee:

	Yes	No	Not Sure
1. Is the employee's primary duty to make outside sales?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the employee customarily and regularly work away from the company's place or places of business?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the worker sell tangible or intangible items, such as goods, insurance, stocks, bonds or real estate, or obtain orders or contracts for services or the use of facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "No" or "Not Sure" to any of these questions, your employee may have been misclassified as an exempt outside sales employee.

Note: The salary basis test does not apply to outside sales employees.

If you have questions or would like additional information, please contact any of the following:

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