

West Virginia Division of Labor

Minimum Wage & Overtime Requirements

West Virginia Division of Labor Wage & Hour Section

Minimum Wage & Overtime Fact Sheet 6 - West Virginia Code Chapter 21, Article 5C (July 2017)

THE PROFESSIONAL EMPLOYEE EXEMPTION

West Virginia's Minimum Wage and Maximum Hour Standards exempt certain categories of workers from minimum wage and maximum hour (overtime) coverage. One of those exemptions applies to professional employees. There are two categories of exemption for professional employees, one for Learned Professionals and the other for Creative Professionals. Any individual that meets all of the criteria necessary to qualify for either of these exemptions would not be covered by state minimum wage or overtime requirements, regardless of the number of hours worked.

EXEMPTIONS DEFINED

For an employer to claim a minimum wage or overtime exemption under the "Learned Professional" or "Creative Professional" exemptions, the employee in question must meet ALL of the conditions necessary to qualify. If any one condition is not met, the employer may not claim the exemption. *§42CSR8-7 & §42CSR8-8*

Learned Professional

- The employee is compensated on a salary or fee basis at a rate equal to at least \$455.00 per workweek, provided, however, that the salary or fee requirements of this provision do not apply to bona fide teachers or practitioners of law or medicine (*§42CSR8-7.a*), and
- The employee's primary duty is the performance of work requiring advanced knowledge (*§42CSR8-7.b*), and
- The advanced knowledge is in a field of science or learning (*§42CSR8-7.c*), and
- The advanced knowledge is customarily acquired by a prolonged course of specialized intellectual instruction. (*§42CSR8-7.d*)

Creative Professional

- The employee is compensated on a salary or fee basis at a rate equal to at least \$455.00 per workweek (*§42CSR8.8.a*), and
- The employee's primary duty is 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, (*§42CSR8.8.b*), and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. (*§42CSR8-8.c*)

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Federal Jurisdiction vs. State

Should 80 percent of a company's employees be covered under the federal minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), the requirements of state law will not apply. When an employer does not meet the 80 percent employee requirement or does not otherwise qualify for FLSA coverage, the requirements of state law will only apply to those locations or business establishments where at least six non-exempt (hourly) employees are working. *See Overtime Fact Sheet 1.*

Any questions relating specifically to federal coverage should be addressed directly to the Wage & Hour Division of the United States Department of Labor (USDOL).

USDOL Contact Information is as follows: 1-866-4-USA-DOL (1-866-487-2365) or www.dol.gov.