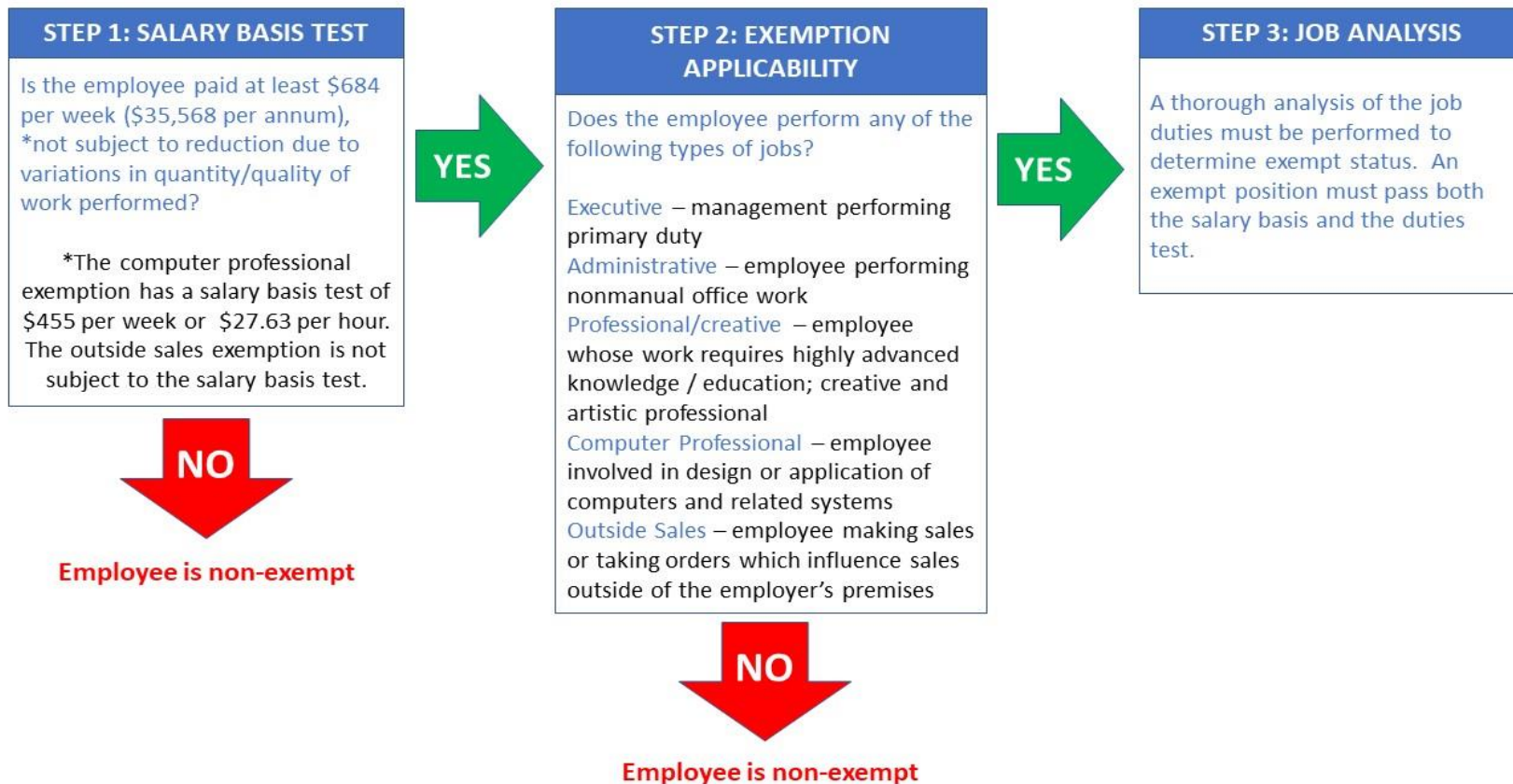


# STEPS FOR DECIDING JOB EXEMPTION STATUS

This exhibit serves as a basic outline for an employer’s initial analysis of positions being considered for exemption under the Department of Labor Fair Labor Standards Act (FLSA) and is meant to serve as one of several tools in an employer’s analysis. The three-step process is explained in greater detail on the following pages.



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## STEP 1: APPLY THE SALARY BASIS TEST

If the employee is paid at least \$684 per week (\$35,568 per annum) that is not subject to reduction due to variations in quantity/quality of work performed, continue to step 2. Please note that the salary basis test for computer professionals is \$455 per week or \$27.63 per hour. The outside sales exemption is not subject to the salary basis test.

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## STEP 2: DETERMINE WHICH EXEMPTION APPLIES

**Executive** – Employee whose primary duty is to manage the business or a recognized department/entity and who customarily directs the work of two or more employees. Also includes individuals who hire, fire or make recommendations that carry particular weight regarding employment status. [Examples: executive, operations manager, owner, manager, supervisor.](#)

**Administrative** – Employee whose primary activities are high level administrative work or nonmanual work on matters of significance relating to the management or business operations of the firm or its customers and which require the exercise of discretion and independent judgment. [Examples: coordinator, office administrator, office manager, accountant.](#)

**Professional/creative** – Employee who primarily performs work requiring advanced knowledge/education and which includes consistent exercise of discretion and independent judgment. The advanced knowledge must be in a field of science or learning acquired in a prolonged course of specialized intellectual instruction. Creative professionals perform work requiring invention, imagination, originality and/or talent in a field of artistic endeavor. [Examples: attorney, physician, statistician, architect, biologist, pharmacist, engineer, teacher, author, editor, composer, musician, artist.](#)

**Computer professional** – Employee who primarily performs work as a computer systems analyst, programmer, software engineer or similarly skilled work in the computer field performing a) application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional specifications; or b) design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specification; or c) design, documentation, testing, creation or modification of computer programs based on and related to user or system design specifications; or a combination of the duties described above, the performance of which requires the same level of skills. [Examples: system analyst, database analyst, network architect, software engineer, programmer.](#)

**Outside sales** – Employee who performs sales work off the company's premises and whose primary duties include making sales or obtaining order or contracts for services or for the use of facilities for which the client or customer pays. This employee is customarily and regularly away from the company's place of business while performing such duties. [Examples: sales representative, account manager, business development representative.](#)

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### STEP 3: CONDUCT JOB ANALYSIS

If the employee passes **BOTH** the salary test (excluding outside sales) and the preliminary exemption criteria review, then a thorough job analysis of the duties actually performed by each employee becomes the key in determining exempt status. **An exempt position must pass both the salary basis and duties tests.** Job titles are insufficient to determine exempt status.

Job analysis should include the following actions:

- Review minimum qualifications established for the job, including education, on-the-job training and experience.
- Review prior job descriptions, job questionnaires and related documentation.
- Confirm with managers that duties and qualifications are accurate.
- Conduct workflow reviews—a useful tool in ascertaining job functions, processes, job boundaries and organizational operations. Schematics and charts can also prove to be helpful.
- Gather organizational charts for departments and positions being reviewed.
- Review policy manuals to determine functional autonomy of positions.
- Gather prior performance reviews which document duties and responsibilities or respective positions.

If little is known regarding the history of a position or it has been inadequately documented, an employer should consider conducting a review of the position to bring it up to date. Recommended activities may include direct job duty observation, work function or work breakdown analysis, group or peer review of occupants sharing the classification, job banding/job progression plans, and work log analysis and job metrics.

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### ANCILLARY ISSUES

- Review state wage/hour laws for those states in which the organization operates to ensure there is no conflict with state laws.
- Capture payroll costs and budgetary needs and evaluate whether costs and budgetary considerations will be best met by raising incumbent salaries to retain exempt status (provided duties test is met), budgeting for overtime costs or hiring additional staff to eliminate the need for overtime.