



# Assessing The Risk:

## Wage and Hour Tip Of The Week

### Making Sure Your Professionals Are Really Professionals

**TIP: Make sure that employees classified as exempt under the learned professional exemption have the requisite background and degree to qualify.**

Under the Fair Labor Standards Act, an employee may be exempt from overtime as a “learned professional” if his or her primary duty requires (1) advanced knowledge, (2) in a field of science or learning, (3) that is customarily acquired through a prolonged course of specialized intellectual instruction. Employers sometimes misinterpret these criteria and assume that any employee with a college certificate or degree makes the grade. As with many aspects of wage-hour law, however, application of these requirements is more complicated than it looks. To minimize the risk of misclassification, employers should keep these guidelines in mind:

1. The degree matters. Experience may serve as a stand-in for a college degree only in very limited circumstances. The examples provided by the Department of Labor – “the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry” – highlight just how rare it is that an individual without a diploma will meet the requirements of the exemption. Applying the professional exemption to any position that requires less than a four-year college degree is risky, and the safest bet is to reserve the exemption only for positions that require a post-graduate degree.

Furthermore, the professional exemption requires “specialized” learning. Accordingly, positions that require only a general four-year academic degree in any field or without any specific training or further instruction most often will not be sufficient to meet the requirements of the professional exemption.

2. The field matters. While the term “field of science or learning” as used in the professional exemption regulations generally is interpreted broadly, it is not without limit. For example, a general degree in “business” often will not suffice. Accounting, on the other hand, is specifically identified in the regulations as a field that meets this requirement.

Because the exemption requires the advanced knowledge at issue to be “customarily” obtained through prolonged educational instruction, it can be difficult to include new occupations under this exemption. Increased educational requirements may not become “customary” in a field until a significant portion of the employees in that field possess the increased education. Certification or licensure requirements may speed up that process, however. For example, the DOL has concluded that licensed funeral directors or embalmers in some states may be classified as exempt professionals because their states require them to complete certain courses relating to the funeral service profession, such as pathology, funeral home management, and grief dynamics and counseling.

3. A true professional uses her degree. Just having a degree is not enough; the employee's primary duties have to make use of that degree. Moreover, an employee classified as exempt under the professional exemption – just like the administrative exemption – must be trusted to exercise independent judgment and discretion. An accountant who regularly and customarily gives advice regarding tax and accounting matters, prepares tax returns, and works on audits will meet the “duties” requirements. By contrast, an accountant who simply consults a checklist to perform the job or handles only routine tasks may not.

In sum, an exempt learned professional will often look like someone who took Dad's advice: she finished her degree (and maybe even got a second one), skipped the B.A. in Pottery in favor of a more practical field, and kept using what she learned after graduation.

*The above are “best practice” suggestions and are in no way meant either to guarantee that use of them creates a litigation risk-free environment or, alternatively, to suggest that any specific practice or policy maintained by an employer violates the law or is indefensible in litigation.*

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