

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>JULIE A. SU</b> , Acting Secretary of Labor, United States Department of Labor,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 1:24-cv-02293
	)	
<b>WARE LANDSCAPING, INC., d/b/a WARE LANDSCAPING &amp; SNOW REMOVAL</b> , and	)	
<b>MICHAEL WARE, an individual</b>	)	
	)	
Defendants	)	
	)	

**CONSENT JUDGMENT AND ORDER**

Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”), has filed a complaint under the Fair Labor Standards Act of 1938 as amended (29 U.S.C. § 201 *et seq.*) (“FLSA”), and Defendants Ware Landscaping, Inc., doing business as Ware Landscaping & Snow Removal, and Michael Ware, individually (collectively “Defendants”) have appeared by counsel, waive their Answer and any defenses which they may have, and agree to the entry of this Consent Judgment and Order (“Consent Judgment”) without contest.

Defendants admit and the Court finds Defendants are engaged in related activities performed through unified operation or common control for a common business purpose and are an “enterprise” under 29 U.S.C. § 203(r) of the FLSA.

Defendants admit and the Court finds Defendants are an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(1)(A) of the FLSA.

Defendants admit and the Court finds Defendants are employers as defined in 29 U.S.C. § 203(d) of the FLSA.

Upon motion of attorneys for the Acting Secretary and Defendants and for cause shown, it is:

ORDERED, ADJUDGED, AND DECREED, pursuant to section 17 of the FLSA that Defendants, their officers, agents, servants, and all persons acting or claiming to act on their behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of sections 6, 7, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) of the FLSA, in any of the following manners:

1. Defendants shall not, contrary to 29 U.S.C. §§ 206 and 215(a)(2), pay to any of their employees who in any workweek are engaged in commerce or in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA, wages at rates less than \$7.25 an hour, or any rate subsequently made applicable by amendment to the FLSA.

2. Defendants shall not, contrary to 29 U.S.C. §§ 207 and 215(a)(2), employ any of their employees including, but not limited to, any of their employees working at Ware Landscaping, Inc., or at any business location owned, operated, and/or controlled by Defendants, and at any other business location at which their employees perform work, in any workweek when they are engaged in commerce or employed in an enterprise engaged in commerce, within the meaning of the FLSA, for workweeks longer than forty hours, unless said employees receive compensation for their employment in excess of forty hours at a rate equivalent to one and one-half times the regular rate at which they are employed.

3. Defendants shall make, keep, and preserve adequate records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them including, but not limited to, any of their employees working at Ware Landscaping, Inc., or at any business location owned, operated, and/or controlled by Defendants, and at any other business location at which their employees perform work, as prescribed by the Regulations issued pursuant to 29 U.S.C. §§ 211(c) and 215(a)(5) and found at 29 C.F.R. Part 516.

Defendants shall make such records available at all reasonable times to representatives of the Acting Secretary.

4. Pursuant to 29 U.S.C. § 215(a)(3), Defendants shall not discharge or take any retaliatory action against any of their current or former employees because the current or former employee engages in any of the following activities:

a. Discloses, or threatens to disclose, to a supervisor or to a public agency, any activity, policy, or practice of the Defendants or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA;

b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA, by the Defendants or another employer with whom there is a business relationship;

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA.

5. No later than 15 days after execution of this Consent Judgment, Defendants shall distribute a physical copy of the U.S. Department of Labor Wage and Hour Division's "Fact Sheet #23: Overtime Pay Requirements of the FLSA" ("Fact Sheet #23"), attached as Exhibit A (English) and Exhibit B (Spanish), and "Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)" ("Fact Sheet #17A"), attached as Exhibit C (English) and Exhibit D (Spanish), to each current employee of any business operated by any Defendant in a language in which the employee is fluent. For a period of no less than 3 years after the execution of this Consent Judgment, Defendants shall post and maintain in one or more conspicuous places at their worksite, including in any place where posters for employees are customarily posted, copies of Fact Sheet #23 and Fact Sheet #17A in English and in Spanish.

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to section 16(c) of the Act, in favor of the Acting Secretary and against Defendants in the total amount of \$135,000.00, plus post-judgment interest as set forth in Exhibit E.

6. The Acting Secretary shall recover from Defendants the sum of \$67,500.00 in unpaid minimum wage and overtime compensation covering the period from October 27, 2020, through October 26, 2022, for Defendants' current and former employees whose names are listed in the attached Exhibit C, and the additional sum of \$67,500.00 in liquidated damages.

a. At the time of Defendants' execution of this Consent Judgment, Defendants shall deliver a first payment in the amount of \$35,000.00 by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or [www.pay.gov](http://www.pay.gov) and searching "WHD Back Wage Payment – Midwest Region".

b. Beginning no later than one month after Defendants' execution of this Consent Judgment, and repeating no later than every month thereafter, Defendants shall make six monthly payments by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or [www.pay.gov](http://www.pay.gov) and searching "WHD Back Wage Payment – Midwest Region". The first five monthly payments shall be in the amount of \$16,666.67, and the sixth and final monthly payment shall be in the amount of \$16,666.65.

c. At the time of Defendants' execution of this Consent Judgment, Defendants shall also furnish to the Acting Secretary the full name, last-known address, last-known phone number, and social security number for each employee named in Exhibit E.

d. Upon receipt of full payment from Defendants, representatives of the Acting Secretary shall distribute such amounts, less appropriate deductions for federal income withholding taxes and the employee's share of the social security (F.I.C.A.) tax, to the employees or their legal representative as their interests may appear, in accordance with the provisions of section 16(c) of the FLSA. Defendants remain responsible for the employer's share of F.I.C.A. arising from or related to the back wages distributed by the Acting Secretary.

e. Neither Defendants nor anyone on their behalf shall directly or indirectly solicit or accept the return of any sums paid under this Consent Order and Judgment.

f. If an individual named on Exhibit E refuses any sums paid under this Consent Order and Judgment by attempting to return them to Defendants or to anyone on Defendants' behalf, Defendants shall refuse to accept them and shall ensure that all such

sums be immediately paid to the Acting Secretary for deposit as above. Defendants shall have no further obligations with respect to such monies.


g. Any monies not disbursed by the Department of Labor after three years from the date of payment by Defendants, because of the inability to locate the proper persons or because of their refusal to accept payment, shall be deposited into the Treasury of the United States as miscellaneous receipts, pursuant to section 16(c) of the FLSA.

h. The provisions of this Consent Judgment shall not in any way affect any legal right of any individual not named on Exhibit E, nor shall the provisions in any way affect any legal right of any individual named on Exhibit E to file any action against Defendants for any violations alleged to have occurred outside the relevant period.

7. By entering into this Consent Judgment, the Acting Secretary does not waive her right to conduct future investigations of Defendants under the provisions of the FLSA and to take appropriate enforcement action, including assessment of civil money penalties pursuant to 29 U.S.C. § 216(e), with respect to any violations disclosed by such investigations.

It is FURTHER ORDERED that each party shall bear their own costs, fees and other expenses incurred by such party in connection with any stage of this proceeding, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

August 2, 2024

  
\_\_\_\_\_  
Hon. Manish S. Shah  
United States District Judge

Entry of this judgment is hereby consented to:

Dated: Aug. 1, 2024

**WARE LANDSCAPING, INC.**

by: M-W

its owner

M-W

**MICHAEL WARE**, individually

Laura A. Balson

**LAURA A. BALSON**

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*Attorneys for Plaintiff Julie A. Su, Acting  
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of Labor*

## **Exhibit A**





**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

# Fact Sheet #23: Overtime Pay Requirements of the FLSA

Revised October 2019

NOTICE: On August 30, 2023, the Department of Labor (Department) announced issuance of a Notice of Proposed Rulemaking (NPRM), *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*. The NPRM proposes to update and revise the regulations issued under section 13(a)(1) of the Fair Labor Standards Act implementing the exemption from minimum wage and overtime pay requirements for executive, administrative, and professional employees. Proposed revisions include increasing the standard salary level and the highly compensated employee total annual compensation threshold, as well as providing an automatic updating mechanism that would allow for the timely and efficient updating of all the thresholds to reflect current earnings data.

This fact sheet provides general information concerning the application of the overtime pay provisions of the FLSA.

## Characteristics

An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

## Requirements

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, as such.

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

The regular rate of pay cannot be less than the minimum wage. The regular rate includes all remuneration for employment except certain payments excluded by the Act itself. Payments which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the statutory exclusions noted above) in any workweek by the total number of hours actually worked.

Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs. In addition, section 7(g)(2) of the FLSA allows, under specified conditions, the computation of overtime pay based on one and one-half times the hourly rate in effect when the overtime work is performed. The requirements for computing overtime pay pursuant to section 7(g)(2) are prescribed in 29 CFR 778.415 through 778.421.

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the regular rate.

## Typical Problems

**Fixed Sum for Varying Amounts of Overtime:** A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of \$180 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is \$12.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at \$13.00 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire \$78.00 must be included in determining the employees' regular rate.

**Salary for Workweek Exceeding 40 Hours:** A fixed salary for a regular workweek longer than 40 hours does not discharge FLSA statutory obligations. For example, an employee may be hired to work a 45 hour workweek for a weekly salary of \$405. In this instance the regular rate is obtained by dividing the \$405 straight-time salary by 45 hours, resulting in a regular rate of \$9.00. The employee is then due additional overtime computed by multiplying the 5 overtime hours by one-half the regular rate of pay ( $\$4.50 \times 5 = \$22.50$ ).

**Overtime Pay May Not Be Waived:** The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked.

### Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.



**Exhibit B**



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

# Hoja de datos #23: Requisitos para el pago de sobretiempo bajo la Ley de Normas Razonables de Trabajo

Octubre 2007

Esta ficha técnica ofrece información general con respecto a la aplicación de las disposiciones de la Ley de Normas Razonables de Trabajo (FLSA) para el pago de sobretiempo.

## Características

Un empleador que requiere o permite que un empleado trabaje sobretiempo generalmente debe pagar al empleado una prima por el trabajo de sobretiempo.

## Requisitos

A menos que estén expresamente exentos, los empleados bajo el alcance de la Ley deben recibir el pago de sobretiempo a una tasa no inferior a tiempo y medio de la tasa regular de pago del trabajador por cada hora trabajada en exceso de 40 en una semana laboral. La Ley no establece limitaciones con respecto al número de horas que los empleados mayores de 16 años pueden trabajar en una semana laboral. La Ley no requiere el pago de sobretiempo por trabajar los sábados, domingos, feriados o días de descanso como tales.

La Ley se aplica por semana laboral. La semana laboral de un empleado es un período fijo y regularmente recurrente de 168 horas, siete períodos consecutivos de 24 horas. No es necesario que coincida con una semana calendario, sino que puede comenzar en cualquier día y a cualquier hora. Se pueden establecer diferentes semanas laborales para diferentes empleados o grupos de empleados. No se permite un promedio de horas entre dos o más semanas. Por lo general, el pago de sobretiempo devengado en una semana en particular debe realizarse en el día de pago habitual para el período en el cual fue ganado.

La tasa regular de pago no puede ser inferior al salario mínimo. La tasa regular incluye toda remuneración por el empleo, excepto ciertos pagos excluidos por la Ley misma. Los pagos que no son parte de la tasa regular incluyen el pago de gastos incurridos en representación del empleador, pagos de primas por sobretiempo trabajado o las primas verdaderas pagadas por el trabajo en días sábados, domingos y feriados, bonos discrecionales, obsequios y pagos en forma de obsequio en ocasiones especiales, y pagos por períodos ocasionales cuando no se realiza trabajo debido a vacaciones, feriados o enfermedad.

Las ganancias pueden determinarse en base a destajo o por pieza, salario, comisión u otros criterios, pero en todos los casos el pago de sobretiempo adeudado deberá computarse en base a la tasa por hora promedio derivada de tales ganancias. Esto se calcula dividiendo el pago total por empleo (con la excepción de las exclusiones nombradas por ley mencionadas anteriormente) en cualquier semana laboral por el número total de horas realmente trabajadas.

Cuando un empleado en una sola semana laboral realiza dos o más tipos diferentes de trabajo para los cuales se han establecido diferentes tasas regulares de pago, la tasa regular para esa semana se determinará calculando el promedio de tales tasas. Es decir, las ganancias de tales tasas se suman y el total se divide por el número total de horas trabajadas en todas las funciones.

Adicionalmente, el artículo 7(g)(2) de la FLSA permite, bajo ciertas condiciones, el cálculo del pago de sobretiempo basado en tiempo y medio de la tasa de pago vigente en el FS 23-SP momento de trabajarse el sobretiempo. Los requisitos para el cálculo del pago de horas extra según el artículo 7(g)(2) figuran en 29 CFR 778.415 hasta 778.421.

Cuando se realizan pagos que no sean en efectivo, en forma de mercaderías o servicios, el costo razonable para el empleador o el valor de tales bienes o servicios debe incluirse en la tasa regular.

## Problemas típicos

Suma fija para cantidades variables de sobretiempo: un monto por trabajo realizado durante las horas de sobretiempo sin tener en cuenta el número de horas de sobretiempo trabajadas no se considera una prima de sobretiempo aunque la cantidad de dinero pagada sea igual o mayor a la suma adeudada basada en la tasa por hora. Por ejemplo, ninguna parte de un monto de \$180 para empleados que trabajan sobretiempo un domingo se considerará como una prima de sobretiempo, aunque la tasa por hora de los empleados sea de \$12.00 la hora y los empleados siempre trabajen menos de 10 horas el domingo. Del mismo modo, cuando un acuerdo establece un pago de 6 horas a \$13.00 por hora independientemente del tiempo real dedicado al trabajo realizado durante las horas de sobretiempo, la totalidad de los \$78.00 debe incluirse para determinar la tasa regular de los empleados.

Salario para la semana laboral que excede las 40 horas: un salario fijo por una semana laboral regular que exceda las 40 horas no representa una exención de las obligaciones establecidas en la FLSA. Por ejemplo, un empleado puede ser contratado para trabajar 45 horas por semana laboral por un salario semanal de \$405. En este caso la tasa regular que se obtiene dividiendo los \$405 del salario directo por 45 horas es de \$9.00. Entonces al empleado se le adeuda el pago de sobretiempo adicional calculado multiplicando las 5 horas de sobretiempo por la mitad de la tasa regular de pago ( $\$4.50 \times 5 = \$22.50$ ).

No se puede renunciar al pago de sobretiempo: no se puede renunciar al requisito de sobretiempo por un acuerdo entre empleador y empleados. Un acuerdo que establezca que sólo se computarán como horas trabajadas 8 horas por día o sólo 40 horas a la semana tampoco cumple con la Ley de Normas Razonables de Trabajo. Un anuncio por parte del empleador estableciendo que no se permitirá trabajar sobretiempo, o que el sobretiempo no se pagará a menos que sea autorizado por adelantado, tampoco cercenará el derecho del trabajador a una retribución por las horas de sobretiempo trabajadas.

### **Dónde Se Puede Conseguir Información Adicional**

**Para conseguir información adicional visite nuestro “Web site” de Horas y Sueldos bajo la dirección: <http://www.wagehour.dol.gov> y/o llame a nuestra línea de información y asistencia, gratuitamente, disponible de 8 de la mañana a 5 de la tarde en su huso horario, 1-866-4USWAGE (1-866-487-9243).**

El propósito de esta publicación es servir de información general y no se debe pensar que contiene el mismo peso que tiene una postura oficial contenida en los reglamentos.



**Exhibit C**



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

# Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

Revised September 2019

NOTICE: On August 30, 2023, the Department of Labor (Department) announced issuance of a Notice of Proposed Rulemaking (NPRM), *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*. The NPRM proposes to update and revise the regulations issued under section 13(a)(1) of the Fair Labor Standards Act implementing the exemption from minimum wage and overtime pay requirements for executive, administrative, and professional employees. Proposed revisions include increasing the standard salary level and the highly compensated employee total annual compensation threshold, as well as providing an automatic updating mechanism that would allow for the timely and efficient updating of all the thresholds to reflect current earnings data.

**\*Note:** The Department of Labor revised the regulations located at 29 C.F.R. part 541 with an effective date of January 1, 2020. WHD will continue to enforce the 2004 part 541 regulations through December 31, 2019, including the \$455 per week standard salary level and \$100,000 annual compensation level for Highly Compensated Employees. The final rule is available at: <https://www.federalregister.gov/documents/2019/09/27/2019-20353/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and-computer-employees>.

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the FLSA as defined by Regulations, 29 C.F.R. Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at not less than time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$684\* per week. Employers may use nondiscretionary bonuses and incentive payments (including commissions) paid on an annual or more frequent basis, to satisfy up to 10 percent of the standard salary level. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, computer and outside sales employees, and for more information on the salary basis requirement.

## Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$684\* per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

## Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684\* per week;
- The employee's primary duty must be 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; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

## Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684\* per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684\* per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

## Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$684\* per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
  1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or



4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

## **Outside Sales Exemption**

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

## **Highly Compensated Employees**

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more (which must include at least \$684\* per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

## **Blue-Collar Workers**

The exemptions provided by FLSA Section 13(a)(1) apply only to "white-collar" employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other "blue-collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

## **Police, Fire Fighters, Paramedics & Other First Responders**

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

## **Other Laws & Collective Bargaining Agreements**

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

## **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website:**

**<http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.



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## **Exhibit D**



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

# Hoja de Datos # 17A: Exención para Ejecutivos, Administradores, Profesionales, Empleados de Informática y Ventas Exteriores Bajo la Ley de Normas Razonables de Trabajo (FLSA)

Revised May 2020

NOTICE: On August 30, 2023, the Department of Labor (Department) announced issuance of a [Notice of Proposed Rulemaking \(NPRM\), \*Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees\*](#). The NPRM proposes to update and revise the regulations issued under section 13(a)(1) of the Fair Labor Standards Act implementing the exemption from minimum wage and overtime pay requirements for executive, administrative, and professional employees. Proposed revisions include increasing the standard salary level and the highly compensated employee total annual compensation threshold, as well as providing an automatic updating mechanism that would allow for the timely and efficient updating of all the thresholds to reflect current earnings data.

Esta hoja de datos ofrece información general sobre la exención a salario mínimo y pago de sobretiempo de la Sección 13(a)(1) de la FLSA de acuerdo a Regulaciones, [29 CFR Parte 541](#).

La [FLSA](#) requiere que a la mayor parte de los empleados en Estados Unidos se les pague al menos el [salario mínimo federal](#) por todas las horas trabajadas y pago de [sobretiempo](#) a no menos de tiempo y medio de la tasa regular por todas las horas trabajadas por encima de 40 horas por semana laboral.

No obstante, la Sección 13(a)(1) de la FLSA provee una exención al salario mínimo y pago de sobretiempo a los empleados verificados en cargos como ejecutivos, administradores, profesionales y vendedores al exterior. La Sección 13(a)(1) y 13(a)(17) también exentan a ciertos empleados de informática. Para calificar para exención, los empleados generalmente deben cumplir con ciertos criterios respecto a sus responsabilidades laborales y ser pagados en base a un salario no menor a \$684\* por semana. Los empleadores pueden usar bonos no discrecionales y pagos de incentivos (incluidas comisiones) pagados anualmente o con mayor frecuencia, para satisfacer hasta el 10 por ciento del nivel base salarial. Los títulos de los cargos no determinan el estatus de exención. Para que aplique una exención, las responsabilidades específicas al puesto del empleado y su salario deben cumplir con todos los criterios de las regulaciones del Departamento.

Consultar otras hojas de datos de esta serie para obtener más información sobre las exenciones para ejecutivos, administradores, profesionales, empleados informáticos y de ventas al exterior, y para información adicional sobre el requisito en base a sueldo.

## Exención Ejecutiva

Para calificar para la exención de empleados ejecutivos, todos estos criterios se deben cumplir:

- El empleado debe ser pagado en [base a un sueldo](#) (como se define en las regulaciones) a una tasa no inferior a \$684\* por semana;
- La principal responsabilidad del empleado debe ser la dirección de la empresa, o la dirección de un departamento o división de la empresa comúnmente referidos como tal;

- El empleado debe por costumbre y regularmente dirigir el trabajo de dos o más empleados a tiempo completo o su equivalente; y
- El empleado debe tener la autoridad para contratar o despedir otros empleados, o se deben valorar sus sugerencias y recomendaciones respecto a contrataciones, despidos, adelantos, promociones o cualquier otro cambio de estatus de otros empleados.

## Exenciones Administrativas

Para calificar para la exención de empleados administrativos todos estos criterios se deben cumplir:

- El empleado debe ser pagado en base a un sueldo o tasa (como definen las regulaciones) a una tarifa no inferior a \$684\* por semana;
- La principal responsabilidad del empleado debe ser el desempeño de tareas de oficina o no manuales directamente relacionadas a la gerencia o a operaciones generales de la empresa o de los clientes del empleador; y
- La responsabilidad principal del empleado incluye el ejercer criterio y juicio independiente sobre asuntos de importancia.

## Exención Profesional

Para calificar para la exención de **profesional docto**, se deben cumplir todos estos criterios:

- Se debe pagar al empleado a base a un sueldo o tasa (como definen las regulaciones) a una tarifa no inferior a \$684\* por semana;
- La principal responsabilidad del empleado debe ser el desempeño de trabajo que exija conocimientos avanzados, que refiere a trabajo de índole predominantemente intelectual y que incluye asuntos que exigen un uso consistente de discernimiento y juicio;
- Los conocimientos avanzados deben referirse al campo científico o de sabiduría; y
- Los conocimientos avanzados se deben adquirir normalmente un curso prolongado de la instrucción intelectual especializada,

Para calificar a la exención de empleado **profesional creativo**, se deben cumplir todos estos criterios:

- Se debe pagar al empleado a base a un sueldo o tasa (como definen las regulaciones) a una tarifa no inferior a \$684\* por semana;
- La principal responsabilidad del empleado debe ser el desempeño de un trabajo que requiera invención, imaginación, originalidad o talento en un reconocido campo artístico o creativo.

## Exención para Empleados de Computadoras

Para calificar a la exención de empleado de computadoras se deben cumplir todos estos criterios:

- Se debe pagar al empleado o en a base a un sueldo o a una tasa (como definen los 3 reglamentos) a una tarifa no inferior a \$684\* por semana o, si se le paga por horas, a una tarifa no inferior a \$27.63 por hora;
- El empleado debe tener empleo como analista de sistemas informáticos, programador de computadoras, ingeniero de programas informáticos, u otro empleado con habilidades semejantes en el campo de las computadoras desempeñando las tareas abajo descritas:
- La principal tarea del empleado debe consistir de:
  1. Aplicación de técnicas de análisis de sistemas y procedimientos, incluidas consultas con usuarios, para determinar el “hardware”, “software” y especificaciones funcionales del sistema;
  2. Diseño, desarrollo, documentación, análisis, creación, prueba o modificación de sistemas o programas de informática, incluidos prototipos, basados en y relacionados a especificaciones del usuario o al diseño del sistema;
  3. Diseño, documentación, prueba, creación o modificación de programas informáticos relacionados a sistemas operativos; o
  4. Una combinación de las tareas anteriormente mencionadas cuyo desempeño exige el mismo nivel de destrezas.

## **Exención para Empleados de Ventas al Exterior**

Para calificar para la exención por ventas al exterior, se deben cumplir todos estos criterios:

- La principal responsabilidad del empleado deben ser ventas (como se define en la FLSA), u obtener órdenes o contratos para servicios o para instalaciones cuyo uso será pagado por el cliente o comprador; y
- El empleado debe estar habitual y regularmente ocupado fuera de la ubicación de la empresa o negocio del empleador.

## **Empleados Altamente Retribuidos**

Empleados altamente retribuidos realizando trabajo de oficina o no manual y pagados anualmente una compensación de \$107,432 o más (que debe incluir al menos \$684\* por semana en base a salario o tasa) están exentos a la FLSA si habitual y regularmente desempeñan al menos una de las responsabilidades de un empleado exento ejecutivo, administrativo o profesional identificado en los criterios normales para exención.

## **Obreros**

Las exenciones provistas por la Sección 13(a)(1) de FLSA aplican sólo a empleados profesionales que cumplen con los criterios que se establecen en la Parte 541 de las regulaciones. Las exenciones no aplican a trabajadores manuales o a otros obreros desempeñados en trabajos que involucran maniobras repetitivas con las manos, habilidad física y energía. Empleados bajo la FLSA, empleados no gerentes en producción, mantenimiento, construcción y ocupaciones semejantes como carpinteros, electricistas, mecánicos, plomeros, fundidores, artesanos, operadores, estibadores, trabajadores de la construcción y obreros por día tienen derecho a salario mínimo y prima por sobretiempo bajo la FLSA, y no están exentos según la Parte 541 de las regulaciones, independientemente de qué altamente sean pagados.

## **Policías, Bomberos, Paramédicos y Otros Agentes de Respuesta Inicial**

Las exenciones tampoco aplican a policías, detectives, adjuntos a sheriff, patrulleros de carretera estatales, investigadores, inspectores, oficiales de prisiones, agentes judiciales de permisos y vigilancia, guardabosques, bomberos, paramédicos, técnicos de emergencia médica, personal de ambulancia, trabajadores de rescate, trabajadores de materiales peligrosos y empleados semejantes, independientemente de rango o nivel salarial, que desempeñan trabajos tales como prevenir, controlar o apagar fuegos de cualquier tipo; rescatar víctimas de fuegos, crímenes o accidentes; prevenir o detectar crímenes; investigar o inspeccionar violaciones a la ley; monitorear; perseguir, inmovilizar y arrestar sospechosos; detener o supervisar criminales bajo sospecha o convictos, incluso aquéllos bajo custodia vigilada o en libertad condicional; entrevistar a testigos; interrogar y tomar huellas digitales a sospechosos; preparar informes de investigación; o cualquier otro trabajo parecido.

## **Otras Leyes y Acuerdos de Negociación Colectiva**

La FLSA provee normas mínimas que se pueden exceder, pero que no pueden ser saltadas o reducidas. Los empleadores tienen que cumplir, por ejemplo, con cualquier ley, reglamento u ordenanza Federal, Estatal o municipal que establezca un salario mínimo superior, o fije un máximo inferior por semana laboral a aquéllos que establece la FLSA. Asimismo, los empleadores pueden, por cuenta propia o bajo un acuerdo de negociación colectiva, proveer un salario superior, una semana laboral más corta, o tasas de pago por sobretiempo superiores a aquéllas que provee la FLSA. Aunque los acuerdos de negociación colectiva no pueden descartar o reducir las protecciones de la FLSA, nada en la FLSA o en la regulación Parte 541 exonere a empleadores de sus obligaciones contractuales bajo dichos acuerdos de negociación colectiva.

## **Dónde Se Puede Conseguir Información Adicional**

**Para conseguir información adicional visite nuestro “Web site” de Horas y Sueldos bajo la dirección: <http://www.wagehour.dol.gov> y/o llame a nuestra línea de información y asistencia, gratuitamente, disponible de 8 de la mañana a 5 de la tarde en su huso horario, 1-866-4USWAGE (1-866-487-9243).**

El propósito de esta publicación es servir de información general y no se debe pensar que contiene el mismo peso que tiene una postura oficial contenida en los reglamentos.



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**EXHIBIT E**

<b><u>Employee</u></b>	<b><u>Back Wages</u></b>	<b><u>Liquidated Damages</u></b>
Aguilar, F.	\$85.03	\$85.03
Aguilar, O.	\$442.00	\$442.00
Alfman, B.	\$227.80	\$227.80
Alvarado, J.	\$1,195.35	\$1,195.35
Alvarado, R.	\$1,411.14	\$1,411.14
Balcazar, C.	\$142.57	\$142.57
Barrera, J.	\$4,738.52	\$4,738.52
Barreto, J.	\$43.38	\$43.38
Calderon, U.	\$621.47	\$621.47
Carranza, I.	\$756.43	\$756.43
Carrera, R.	\$416.74	\$416.74
Castillo, I.	\$129.93	\$129.93
Castro, U.	\$649.71	\$649.71
Chavez Calderon, M.	\$164.42	\$164.42
Chavez Martinez, A.	\$1,227.18	\$1,227.18
Cruz, H.	\$2,900.00	\$2,900.00
Cruz, J.	\$186.69	\$186.69
Cruz, L.	\$106.01	\$106.01
Cruz, M.	\$272.65	\$272.65
Cruz, P.	\$140.02	\$140.02
Dcelis, E.	\$188.40	\$188.40
Dominguez, J.	\$284.67	\$284.67
Garcia, S.	\$792.92	\$792.92
Garcia Quintana, J.	\$893.98	\$893.98
Garduno Hernandez, G.	\$2,671.28	\$2,671.28
Gomez, S.	\$212.75	\$212.75
Gonzalez, L.	\$969.85	\$969.85
Gonzalez, V.	\$217.06	\$217.06
Guerrero, L.	\$74.36	\$74.36
Guijosa, J.	\$6,730.73	\$6,730.73
Gutierrez Hernandez, J.	\$436.99	\$436.99
Hernandez, A.	\$52.39	\$52.39
Ibarra Garza, M.	\$716.59	\$716.59
Jacinto, W.	\$163.04	\$163.04
Jimenez, F.	\$288.85	\$288.85



<b><u>Employee</u></b>	<b><u>Back Wages</u></b>	<b><u>Liquidated Damages</u></b>
Jimenez Lopez, M.	\$349.16	\$349.16
Leyva, I.	\$20.55	\$20.55
Lopez, E.	\$55.98	\$55.98
Lopez, G.	\$168.06	\$168.06
Lopez, M.	\$266.12	\$266.12
Maldonado, D.	\$654.11	\$654.11
Manzanares, M.	\$1,178.08	\$1,178.08
Marin, J.	\$192.29	\$192.29
Martinez, E.	\$1,481.17	\$1,481.17
Martinez, F.	\$5,418.92	\$5,418.92
Martinez, J.	\$926.62	\$926.62
Medina Fierros, L.	\$652.64	\$652.64
Mendoza, A.	\$763.76	\$763.76
Montanez, L.	\$1,378.41	\$1,378.41
Morales, F.	\$661.33	\$661.33
Pantoja Hernandez, C.	\$298.99	\$298.99
Perez, Al.	\$1,259.72	\$1,259.72
Perez, Ang.	\$349.99	\$349.99
Perez, Ans.	\$754.49	\$754.49
Perez, C.	\$613.06	\$613.06
Perez, M.	\$363.15	\$363.15
Perez Cruz, F.	\$224.13	\$224.13
Perez de Leon, E.	\$4,662.39	\$4,662.39
Perez Lopez, D.	\$54.44	\$54.44
Quiroz, J.	\$471.47	\$471.47
Ramirez, F.	\$691.16	\$691.16
Ramirez Melendez, J.	\$71.24	\$71.24
Reyes, M.	\$1,479.21	\$1,479.21
Romero, A.	\$311.29	\$311.29
Romero, A.	\$1,890.10	\$1,890.10
Romero, M.	\$1,159.58	\$1,159.58
Romero, R.	\$485.73	\$485.73
Rosas, A.	\$139.17	\$139.17
Ruiz, L.	\$932.15	\$932.15
Ruiz Ruiz, A.	\$110.82	\$110.82
Saban Sunuc, J.	\$1,760.74	\$1,760.74
Sanchez Hernandez, H.	\$364.59	\$364.59
Santiz Gutierrez, A.	\$322.81	\$322.81

<u>Employee</u>	<u>Back Wages</u>	<u>Liquidated Damages</u>
Torres, D.	\$1,014.84	\$1,014.84
Urbina Valdez, L.	\$462.58	\$462.58
Vazquez Lopez, M.	\$291.94	\$291.94
Ventura, E.	\$2,242.12	\$2,242.12
<b>Total</b>	<b>\$67,500.00</b>	<b>\$67,500.00</b>