

Comparison of Final US DOL “White Collar” Exemption Amendments and Oregon Law

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“EXECUTIVE” Employees

	Current Federal Provisions-§541.1 and 541.101		4.23.04 Final Federal Rules -§541.100	Current State Provisions
	Current “Long” Test	Current “Short” Test		
Salary	\$155 per week	\$250 per week §541.119	\$455 per week	\$282 per week*
Duties	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p> <p>Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight).</p> <p>Customarily and regularly exercises discretionary powers.</p> <p>Does not devote more than 20 percent (40 percent in retail or service establishments of time to activities that are not directly and closely related to exempt work. §541.112</p>	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p> <p>**Primary Duty is defined in Sec. 541.103 and a good rule of thumb is that the major part, 50% or more, of the employee’s time is spent performing exempt duties. Although time alone is not the sole test; other factors can be considered.</p>	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p> <p>Has authority to hire or fire other employees or whose suggestions or recommendations as to hiring, firing, advancement, promotion or other change of status of other employees are given “particular weight.” (+new definition)</p> <p>New “primary duty” definition at §541.700 states the primary duty means “the principal, main, major or most important duty that the employee performs....” NOTE: Definition applies to every exemption now.</p>	<p>Primary duty consists of the management of the enterprise in which the employee is employed;</p> <p>Customarily and regularly directs the work of two or more other employees therein;</p> <p>Has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion of any other change of status of other employees will be given particular weight. OAR 839-020-005(1).</p> <p>State law still requires a white collar exempt employee “exercises discretion and independent judgment” and “perform predominantly intellectual, managerial or creative tasks.” [Current Oregon rule same as federal long test]</p>

“ADMINISTRATIVE” Employees

	Current Federal Provisions – Sec. 541.2 and 541.201		4.23.04 Final Federal Rules-§541.200	Current State Provisions
	Current “Long” Test	Current “Short” Test		
Salary	\$155 per week	\$250 per week- §541.214	\$455 per week	\$282 per week*
Duties	<p>Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer’s customers.</p> <p>Customarily and regularly exercises discretion and independent judgment.</p> <p>Regularly and directly assists a proprietor, or exempt executive or administrative employee; or performs specialized or technical work requiring special knowledge under only general supervision; or executes special assignments under only general supervision.</p> <p>Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to exempt work. §541.209</p>	<p>Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer’s customers.</p> <p>Customarily and regularly exercises discretion and independent judgment.</p> <p>**Primary Duty is defined in Sec. 541.206 and 541.103.</p>	<p>Primary duty of performing office or non-manual work directly related to the management* or general business operations of the employer or the employer’s customers.</p> <p>**Exercises discretion and independent judgment with respect to “matters of significance.” (+new definition)</p> <p>*Deleted “policies”</p> <p>**Deleted “customarily and regularly”</p>	<p>Primary duty of performing office or non-manual work directly related to management <i>policies</i> or general business operations of the employee's employer or the employer's customers; or</p> <p>Primary duty of performing functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein. OAR 839-020-005(2).</p> <p>State law still has “exercises discretion and independent judgment”. ORS 653.020(3)(b).</p> <p>[Current Oregon rule same as federal long test rule]</p>

“LEARNED PROFESSIONAL” Employees

	Current Federal Provisions – Sec. 541.3(a)(1) and §541.301		4.23.04 Final Federal Rules-§541.300	Current State Provisions
	Current “Long” Test	Current “Short” Test		
Salary	\$170 per week	\$250 per week-§541.315	\$455 per week	\$282 per week*
Duties	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20 percent of time to activities that are not an essential part of and necessarily incident to exempt work. §541.309</p>	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>Consistently exercises discretion and judgment.</p> <p>**Primary Duty is defined in Sec. 541.304., 541.103 and 541.206.</p>	<p>Primary duty of performing work requiring knowledge of an advanced type;</p> <p>In a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>“Advanced knowledge” includes work that is predominantly intellectual in character; includes work requiring the consistent exercise of discretion and judgment.”</p>	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes.</p> <p>OAR 839-020-005(3)(a)(A).</p> <p>NO “alternative means” of acquiring knowledge of an advanced type.</p> <p>State law and rule retains “exercises discretion and independent judgment” criteria for educators. ORS 653.020(3)(b).</p>

“CREATIVE PROFESSIONAL” Employees

	Current Federal Provision – Sec. 541.3(a)(2) and 541.302		4.23.04 Final Federal Rules	Current State Provisions
	Current “Long” Test	Current “Short” Test		
Salary	\$170 per week	\$250 per week- §541.315	\$455 per week	\$282 per week*
Duties	<p>Primary duty of performing work that is original and creative in nature in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination, or talent of the employee.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work. §541.309.</p>	<p>Performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor.</p>	<p>Primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.</p>	<p>Primary duty of performing work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee.</p> <p>Customarily and regularly exercises discretion and independent judgment;</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time; and</p> <p>Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work. OAR 839-020-005(3)(a)(B)</p>

Computer Employees

	Current Federal Provisions – Sec. 541.3(a)(4) and 541.303			4.23.04 Final Federal Rules	Current State Provisions
	Current “Long” Test	Current “Short” Test	Section 13(a) (17) Test		
Salary	\$170 per week	\$250 per week	\$27.63 an hour	\$455 per week or \$27.63 an hour	\$282 per week or \$27.63/hour
Duties	<p>Primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time. Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work</p>	<p>Primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.</p> <p>Consistently exercises discretion and judgment.</p>	<p>Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications; 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 specifications; or (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled work in the computer field.</p>	<p>Primary duty of (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 specifications; or (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled work in the computer field.</p>	<p>Substantially the same but state requires educational requirement to be met for “professional” exemption for private sector employers; and</p> <p>Retains “consistent exercise of discretion and judgment” criteria.</p> <p>839-020-0125(2)(h) exempt from OT if paid more than \$27.63 an hour.</p>

“OUTSIDE SALES” Employees

	Current Federal Provisions		4.23.04 Final Federal Rules-§541.500	Current State Provisions
	Current “Long” Test	Current “Short” Test		
Salary	None required.	None required.	None required.	None required.
Duties	<p>Employed for the purpose of and customarily and regularly engaged away from the employer’s place of business in making sales; or in obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.</p> <p>Does not devote more than 20 percent of the hours worked by nonexempt employees of the employer to activities that are not incidental to and in conjunction with the employee’s own outside sales or solicitations.</p>	No separate “short” test.	<p>Primary duty of making sales; 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.</p> <p>Customarily and regularly engaged away from the employer’s place of business in performing such primary duty.</p>	<p>Primary duty of (A) Making sales; or (B) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer</p> <p>Customarily and regularly engaged away from the employer's place or places of business.</p> <p>No more than 30% non-exempt work/week may be performed. Provided, that work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, will not be regarded as non-exempt work.</p> <p>Independent judgment and discretion required. OAR 839-020-005(4). See ORS 653.020(6).</p>

Significant Definitions

Term	Current Federal Rules	New Federal Rules- 4.23.04-§541.202	State Law or Rules
<p>Discretion and Independent Judgment</p>	<p align="center">Discretionary powers</p> <p>Requires an exempt executive employee customarily and regularly exercise discretionary powers. A person whose work is so completely routinized that he has no discretion does not qualify for exemption.</p> <p>The phrase “<u>customarily and regularly</u>” signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretionary powers in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretionary powers.</p> <p>NEW Federal rules define “customarily and regularly” means “a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed “customarily and regularly” includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.” §541.701.</p>	<p>In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.</p> <p>The term must be applied in the light of all the facts involved in the employee’s particular employment situation, and implies that the employee has authority to make an independent choice, free from immediate direction or supervision. The fact that an employee’s decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment.</p> <p>Factors to consider include, but are not limited to: whether the employee:</p> <ul style="list-style-type: none"> ◇ Has authority to: ◇ Formulate, affect, interpret, or implement management policies or operating practices; ◇ Carry out major assignments in conducting the operations of the business; ◇ Commit the employer in matters that have significant financial impact; ◇ Waive or deviate from established policies and procedures without prior approval; or other factors set forth in the regulation. ◇ Performs work that affects business operations to a substantial degree. 	<p>"Independent Judgment and Discretion" means the selection of a course of action from a number of possible alternatives after consideration of each, made freely without direction or supervision with respect to matters of significance. It does not include skill exercised in the application of prescribed procedures. 839-020-005(4).</p> <p>ORS 653.020 also contains term Exercises discretion and independent judgment.</p>

Term	Current Federal Rules	New Federal Rules- 4.23.04	State Law or Rules
Primary Duty	<p>A determination of whether an employee has management as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case it may be taken as a good rule of thumb that primary duty means the major part, or over 50 percent, of the employee's time. Thus, an employee who spends over 50 percent of his time in management would have management as his primary duty. Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of his time in managerial duties, he might nevertheless have management as his primary duty if the other pertinent factors support such a conclusion. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, his relative freedom from supervision, and the relationship between his salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.</p>	<p>(a) To qualify for exemption under this part, an employee's ``primary duty" must be the performance of exempt work. The term ``primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.</p> <p>Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.</p> <p>(b) The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement. Time alone, however, is not the sole test, and nothing in this section requires that exempt employees spend more than 50 percent of their time performing exempt work. Employees who do not spend more than 50 percent of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support such a conclusion.</p>	<p>Primary Duty-(25) "Primary duty" means, as a general rule, the major part, or over 50 percent, of an employee's time. However, a determination of whether an employee has management as the employee's primary duty must be based on all the facts of a particular case. Time alone is not the sole test and in situations where the employee does not spend over 50 percent of the employee's time in managerial duties, the employee might have management as a primary duty if other pertinent factors support such a conclusion. Factors to be considered include, but are not limited to, the relative importance of the managerial duties as compared with other duties, the frequency with which the employee exercises discretionary powers, the relative freedom from supervision and the relationship between the salary paid the employee and wages paid other employees for the kind of non-exempt work performed by the supervisor.</p>