

Compliance with the DOL's New Overtime Rules: The Exemption Job Analysis

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¹ C.M. Hanvey & E.B. Arnold, "Are your employees overtime-eligible?" *Journal of Compensation and Benefits* (November/December 2016): 20-27; C.M. Hanvey & E.B. Arnold, "FLSA Exemption Update: Focus on the Duties Test," *Journal of Compensation and Benefits* (November/December 2017): 5-13.

Abstract

On September 24, 2019, the US Department of Labor (DOL) announced its final rule to revise regulations that define which employees are exempt from Fair Labor Standards Act (FLSA) protections such as overtime. The most notable revision is an increase to the minimum salary for exempt employees to \$684 per week.² This rule will expand overtime protections to more than one million employees and will take effect on January 1, 2020. We expect that these revisions will motivate many employers to audit employee classifications to minimize the legal risks associated with misclassification. In this article, we discuss the revisions to the FLSA and describe methods to collect valid and reliable data regarding employees' job duties to help determine which employees should be classified as overtime eligible. The methodologies we describe are based on our extensive experience evaluating employee classifications in many organizations across a range of industries.

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² US Department of Labor (DOL), 29 CFR Part 541, *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees* (September 26, 2019), available at: https://www.dol.gov/whd/overtime2019/overtime_FR.pdf

Overview

On September 24, 2019, the US Department of Labor (DOL) announced a final rule to revise Fair Labor Standards Act (FLSA regulations (29 CFR 541 et seq.) to modify the criteria to be classified as exempt from the FLSA (“2019 Rules”). The most notable change in the 2019 Rules is an increase to the minimum salary an employee must be paid in order to be overtime exempt—increasing from \$455 per week (\$23,660 per year) to \$684 per week (\$35,568 per year). When the 2019 Rules are implemented in 2020, the DOL estimates more than one million US workers will no longer qualify for an exemption and will have become eligible for overtime pay and other FLSA protections.³

The second component of the 2019 Rules, the “Duties Test,” remains unchanged from existing regulations. The duties an employee performs remain a critical component of the criteria for FLSA exemptions. The Duties Test dictates that to be exempt from overtime pay, employees must perform their jobs such that their “primary duty” is exempt. An employee’s primary duty still must satisfy the criteria from an exemption to be classified as exempt from the FLSA.

The DOL previously attempted to modify these rules in 2016. The 2016 Rules proposed an increase in the minimum salary an employee must be paid in order to be overtime exempt to \$913 per week (\$47,476 per year),⁴ substantially higher than the 2019 Rules. However, on August 31, 2017, a Texas federal judge invalidated the 2016 Rules as part of litigation brought by the Plano Chamber of Commerce and more than fifty-five business groups, including twenty states that had challenged the increase. The judge granted summary judgment in favor of the business groups, stating, in part, that the increase in the 2016 FLSA regulation was simply too high and would essentially invalidate the Duties Test. In other words, nearly all employees who met the proposed salary test would also satisfy the Duties Test.

The goal of this article is to describe several scientifically based methodologies that can be used to determine whether employees’ “primary duties” qualify them to be overtime exempt. Each methodology is based on well-established job analysis techniques and is designed to collect detailed data on the work employees actually perform, the amount of time they spend performing that work, and the context in which that work is performed. We have developed and refined these job analysis methodologies over many years, specifically to address the key issues relevant to assessing an employee’s exempt status, and have used them successfully with many clients in both a consulting role and in response to litigation.

The “White Collar” FLSA Exemptions

The FLSA, enacted in 1938, grants numerous wage and hour protections to US employees unless they meet the criteria for an exemption and have been classified by their employer as “exempt.” The most notable FLSA protection entitles workers to overtime pay at 1.5 times their regular rate for all hours worked in excess of 40 in a week. Employees who qualify for an exemption may legally be classified as “exempt” and thus are not entitled to any FLSA protections, including overtime pay. Exempt employees are paid a fixed salary regardless of the number of hours they work (i.e., “salaried”).

The DOL’s Wage and Hour Division has established exemption rules for employees under the FLSA. The three most common exemptions (Executive, Administrative, and Professional), commonly known as the “White Collar” exemptions, are summarized in Table 1. The changes to the salary thresholds are noted.

³ US DOL, *Overtime Update* [Final Rule] (2019), available at: <https://www.dol.gov/whd/overtime2019/>

⁴ US DOL, *Defining and Delimiting the Exemptions for the Executive, Administrative, Professional, Outside Sales and Computer Employees* [Final Rule] (2016), available at: <https://federalregister.gov/a/2016-11754>

TABLE 1: SUMMARY OF NEW FLSA EXEMPTION CRITERIA FOR WHITE COLLAR EXEMPTIONS⁵***Executive Exemption***

- (1) Paid a salary of \$684 (previously \$455) or more per week; and**
- (2) Primary duty is management of the enterprise, department, or subdivision; and**
- (3) Manages two or more employees; and**
- (4) Has the authority to hire or fire others (or whose recommendations are given particular weight).**

Administrative Exemption

- (1) Paid a salary of \$684 (previously \$455) or more per week; and**
- (2) 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; and**
- (3) Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.**

Professional Exemption

- (1) Paid a salary of \$684 (previously \$455) or more per week; and**
- (2) Primary duty is work requiring one of the following:**
 - a. Advanced knowledge (i.e., “Learned Professional”); or**
 - b. Invention, imagination, originality, or talent in an artistic or creative field (i.e., “Creative Professional”).**

Although the specific criteria for each exemption differ, all exemptions are based on two broad factors: the employee's salary (Salary Test) and the employee's job duties (Duties Test).

⁵ This list is a summary of the criteria contained in the Code of Federal Regulations. The actual regulations [see 29 CFR 541 et seq.] provide additional explanation and guidance. Available at <https://www.federalregister.gov/documents/2019/09/27/2019-20353/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>

Salary Test

To satisfy the new Salary Test, the employee must be paid a minimum salary of \$684 per week (\$35,568 per year). An evaluation of whether employees meet the Salary Test involves analyzing payroll data to determine which employees reach the minimum salary threshold. The Salary Test may not require expertise in work measurement.

Duties Test

The Duties Test remains unchanged. Determining whether a job in an organization meets the Duties Test requires detailed measurement of work behaviors. To satisfy the current Duties Test, the employee's "primary duty" must be exempt work. An evaluation of "primary duties" requires an understanding of what work employees actually perform, the context in which work is performed, the nature of the work, and the time spent on that work. One method used to collect data relevant to this evaluation is a job analysis.⁶

The precise definition of primary duty can be unclear due to different interpretations across geographies, industries, and courts. In federal courts, "primary duty" has been interpreted qualitatively, meaning that there is no defined threshold for the percent of time that an employee needs to spend performing exempt duties. Other factors, such as importance of the work performed, may be considered in addition to percent of time spent when determining an employee's primary duty. Because of this qualitative focus, employees may be considered exempt even if they spend less than half of their time performing exempt work.

In contrast, California's state labor laws (for which exemption litigation is disproportionately high) are more restrictive, requiring that exempt employees spend more than 50 percent of their time performing exempt work. Employers operating in California must comply with the more restrictive state standard.

Through our extensive client work auditing employees' job duties using job analysis, we have developed several methodologies to measure the specific factors relevant to the different exemptions under both standards. These methodologies can be used to collect precise measurements of work behaviors, which is useful for addressing exempt status under both state and federal regulations. The three most commonly used exemption job analysis methodologies are described in the following section.

The Exemption Job Analysis

The specific method of data collection should be selected and customized based on the specifics of the job and the exemption(s) being evaluated. Having executed more than one hundred exemption studies for many different positions across a variety of industries, we offer a general framework for the evaluation process and examples to highlight some issues that may arise for employers.

The common theme across the following methods is primary data collection. Reviewing documents that provide high-level descriptions of the work that employees in certain positions are *supposed to do* (e.g., job descriptions) provides some value, but in isolation these documents are limited. In many situations, employers will benefit from a review of data that shows what employees *actually do* on the job.

⁶ For additional information, see C.M. Hanvey, *Wage and Hour Law: Guide to Methods and Analysis*, New York, NY: Springer (2018); C.M. Hanvey & C.G. Banks, "Wage and Hour Litigation," in C.M. Hanvey and K. Sady (Eds.), *Practitioner's Guide to Legal Issues in Organizations*, New York, NY: Springer (2015); C.G. Banks & L.W. Aubry, "How to Conduct a Wage and Hour Audit for Exemptions to Overtime Laws," *Bender's Labor & Employment Bulletin* (2005): 292-302; C.G. Banks & L. Cohen, "Wage and Hour Litigation: I-O Psychology's New Frontier," in F.J. Landy, *Employment Discrimination Litigation*, Jossey-Bass/Pfeiffer (2005); H.Y. Ko & B.H. Kleiner, "Analyzing Jobs to Determine Exempt or Non-Exempt Status," *Equal Opportunities International* 24(5/6) (2005): 93-100; A.L. Honorée, D.C. Wyld, & R.L. Juban, "A Step-by-Step Model for Employers to Comply with the Fairpay Overtime Initiative under the Fair Labor Standards Act (FLSA)," *Equal Opportunities International* 24(2) (2005): 54-66.

The most appropriate job analysis methods for collecting valid and reliable data to evaluate exemption status are: 1) observing and documenting how employees perform their work, or 2) collecting verbal/written self-reports from employees about the work they perform. Each of these methods is based on scientifically sound job analysis techniques. The appropriate method for a given organization or job is dependent on several factors, such as: the type of work performed, the language ability of employees, the geographic disparity of employees, and even practical considerations such as cost and time. Most important, the method selected must be capable of generating valid and reliable data. A general overview of the underlying process for conducting a job analysis for auditing classification is provided in Graphic 1.

GRAPHIC 1: GENERAL FRAMEWORK OF AN EXEMPTION JOB ANALYSIS⁷



Time and Motion Observations

Time and motion observation studies result in a robust data set that many readers find particularly compelling. Observations involve a trained job analyst directly observing and documenting a continuous record of all tasks an employee performs throughout the day, along with the duration of each task performed. One advantage of this method is that data are collected from an objective professional who directly observes and documents the tasks performed in a given work environment. This ensures that data are free from biases or memory decay that may lead to inaccurate self-reports. An example of a partial observation record is included below.

⁷ For illustrative purposes only. The specifics for each study will vary.

TABLE 2: EXAMPLE OF PARTIAL OBSERVATION RECORD OF RETAIL SALES MANAGER

TASK START	TASK END	PERIOD TIME	TASK
12:53:30	12:54:30	0:01:00	Plug in and start laptop in back office.
12:55:30	12:56:20	0:00:50	Review company mail.
12:57:10	12:58:40	0:01:30	Retrieve and put on radio.
13:00:10	13:02:40	0:02:30	Receive update from employee about customer service issue.
13:05:10	13:05:30	0:00:20	Inform employee that they will go over training today.
13:05:50	13:06:50	0:01:00	Discuss lunch scheduling and whether it is completed yet with Assistant Manager.
13:07:50	13:09:00	0:01:10	Discuss results of Operations audit with Assistant Manager.
13:10:10	13:11:10	0:01:00	Ask employee status of her assigned tasks.
13:12:10	13:12:50	0:00:40	Review Assistant Manager's observation and evaluations of other employees.
13:13:30	13:13:50	0:00:20	Direct employee to transfer phone book for customer.
13:14:10	13:14:40	0:00:30	Monitor customer service at POS station.
13:15:10	13:16:30	0:01:20	Receive message from employee regarding survey of IT maintenance service.
13:17:50	13:19:20	0:01:30	Adjust merchandise on shelves.
13:20:50	13:21:30	0:00:40	Check in with other employees regarding task status and how things are going on the sales floor.
13:22:10	13:27:20	0:05:10	Review timesheets in system for exceptions or errors in coding, and approve.
13:32:30	13:33:50	0:01:20	Run and review report for missing time sheets.
13:35:10	13:38:30	0:03:20	Review requests for time off, and approve or reject.
13:41:50	13:44:10	0:02:20	Ask employee whether she completed training, and direct her to complete it.

Once collected, individually recorded tasks can be grouped into exempt and non-exempt categories⁸ and analyzed to provide an overall percentage of time spent on different exempt activities. Other factors relevant to a classification evaluation, such as task importance, independent judgment and decision making, and role in hiring and firing, may be difficult to observe directly because they are mental processes that are not visible and may occur infrequently. Therefore, observation data can be supplemented with some self-report data collected from incumbents or managers to specifically address these areas.

Conducting observations of all employees in a population is typically cost prohibitive. Therefore, it is typically necessary to collect data from a sample of employees. The methods used to select the sample should be carefully considered to avoid bias.

An important consideration when conducting an observation study is the type of job being evaluated. Some tasks (e.g., mental tasks) do not lend themselves to an observation methodology. Jobs that are composed primarily of these types of tasks are more challenging to observe. Jobs that are composed primarily of visible tasks are more easily studied using observational techniques. The case study below describes an observation study we conducted of a cable installation manager at a company operating in California.

⁸ Specific legal expertise may be required for classification of tasks.

CASE STUDY 1: OBSERVATION STUDY OF CABLE INSTALLATION MANAGERS

A client was facing litigation in California claiming that its cable installation managers (managers) were misclassified as exempt. To collect job analysis data relevant to evaluating the job based on the executive exemption, we designed a study that included conducting thirty full-shift manager observations and ten structured interviews with managers.

We started the study by reviewing documents (e.g., job descriptions, training materials), interviewing manager supervisors, and visiting managers outside of California. These visits allowed us to observe work firsthand. Observing out-of-state managers gave us the opportunity to ask incumbent managers questions without tapping into the same group of managers in California that we would ultimately be studying.

We learned important details about the work environment from these interviews and visits. This information was used to develop a “Task List” of individual tasks that any manager could perform on the job. This list was used by observers as a guide to accurately record and categorize the tasks they observed. This list was grouped by topic into “Task Areas,” which were then classified as “exempt” or “non-exempt” by counsel. This structure was used to analyze the data collected and to determine how these managers spent their time individually and as a group.

To standardize the observation data collection and ensure that observers were prepared to respond appropriately to potential customer interactions, we prepared a detailed Observation Protocol. The protocol provided guidance to observers on how to track unique tasks and scripted language to use in various scenarios.

Through our preliminary research, we learned that managers sometimes performed additional work from home before and after their formal “work day.” To capture information about the entire range of tasks performed, we conducted additional structured interviews with a supplemental sample of managers. After the observations were completed, we followed up with this sample of managers by phone and asked them to self-report additional information on topics such as work performed from home and possible changes in their jobs over time.

The observation and interview data provided a comprehensive picture of the manager job and enabled us to provide to the client information relevant to evaluating its classification. The client used the results of the study in the litigation.

Self-Report

JOB ANALYSIS QUESTIONNAIRES

A second method for evaluating exemption classifications is a self-report job analysis questionnaire. This method involves collecting self-report responses from employees and/or their managers to a series of written questions. Based on current science and best practices in the field, the job analysis questionnaire is a carefully designed instrument specifically designed to accurately measure employee behaviors in the workplace.

One advantage of a self-report questionnaire is that it can be administered to a large number of employees relatively inexpensively. In addition, data can be collected regarding past experiences, and questions can be asked about issues that may be difficult to observe, such as decision-making authority or the reason tasks are performed. Self-report data collection can be used independently or in conjunction with other methods.

To address factors relevant to the exemptions, a job analysis questionnaire must be thorough, detailed, and comprehensive. For example, our job analysis questionnaires often include five or more sub-sections, each covering a different element of the job. Given the length of the questionnaire, participation can be time consuming for employees. However, this is necessary to collect sufficient data to draw meaningful conclusions.

Topics addressed in a self-report tool can include tasks performed, time spent, decision making, level of autonomy, task importance, role in different operational areas, and other special duties or responsibilities. Using this approach can also provide insight into the *reasons* behind employees performing various tasks. If, for example, a manager at a retail

store is spending the majority of his/her time ringing up customers on the register, a self-report tool can reveal that the reason for this behavior is to ensure that a recently repaired register is functioning properly. This type of information can be critical in determining whether noncompliant behavior is an individualized issue or a structural problem throughout the organization.

Different mediums can be used to administer a job analysis questionnaire. Two that we use for clients are hard-copy “paper and pencil” questionnaires and online, web-based questionnaires. One consideration when choosing a medium for administration is that the administration of a hard-copy questionnaire requires more time and effort to manage, including coordinating and overseeing proctored, in-person administration sessions. In contrast, an online questionnaire requires less time to administer, but it is only feasible when employees have reliable access to and general familiarity with computers and the internet. In addition, participants’ ability to ask clarifying questions can be limited using an online format.

If a hard-copy questionnaire is used, the employees’ responses must be subsequently entered into an electronic form before they can be analyzed. If an online questionnaire is used, no data entry is required, and the responses can be downloaded easily and analyzed to determine how employees responded. The case study below describes how we used an online questionnaire to conduct a study of a Store Manager position working at different client locations around the country.

CASE STUDY 2: ONLINE JOB ANALYSIS QUESTIONNAIRE FOR NATIONAL RETAILER

In-house counsel for a national retail company asked us to develop a program to proactively assess whether its Store Managers were performing their jobs in a way that met the criteria for the executive exemption. They also asked us to design a coaching program to modify the behavior of employees who were not performing the Store Manager job the way it was intended (i.e., majority of time spent on exempt tasks). To accomplish this, we developed an online job questionnaire with an accompanying feedback and coaching component.

To develop this customized questionnaire, we started by reviewing existing documents, including training and operations materials and job descriptions of various positions in the store. Next, we visited a variety of stores around the country to interview and observe Store Managers to learn firsthand about store operations and Store Manager job responsibilities. We also held multiple “subject-matter expert” focus group meetings with District Managers representing geographies around the country to gather information about the differences between stores and how these differences could impact the way a Store Manager spends his/her time.

Based on this background information, we developed a comprehensive list of tasks Store Managers may perform on the job. This task list was then reviewed by multiple groups of District Managers for accuracy, and modifications were made based on their input.

The task list was used as the basis of the questionnaire. Participants were asked to report the relative time spent on each task on the list. Next, tasks were grouped into Task Areas (i.e., groups of tasks that serve a common function), and participants reported the percentage of time they spent performing work in each Task Area. Task Areas were pre-classified as exempt or non-exempt by an external legal expert, allowing calculation of total time spent on exempt work. Finally, we asked Store Managers to report the reasons they performed non-exempt tasks. This was used to help customize the follow-up coaching process. The entire questionnaire was then reviewed by groups of District Managers for clarity, and revisions were incorporated based on District Manager feedback.

The online questionnaire was then pilot tested with a random sample of Store Managers to ensure that the instructions were clear and that the content was appropriate and accurately reflected the scope of the Store Manager job. After making minor revisions based on this feedback, we administered the questionnaire to more than 1,200 Store Managers nationwide.

Analysis revealed that most of the Store Managers were spending the majority of their time on exempt work. The Store Managers who were spending a large percentage of their time on non-exempt activities were identified, and the reasons these Store Managers reported performing non-exempt activities were reviewed.

Based on the reasons reported for performing non-exempt work, a customized coaching program was developed for each of these Store Managers. District Managers were given coaching points that were customized for each Store Manager depending on his/her specific reasons for performing specific tasks. District Managers used the coaching guide as a basis to work with each Store Manager to identify goals and strategies for performing the job as expected and dedicating the appropriate level of time and importance to exempt work.

To communicate the results of the questionnaire out to field management, we created an automated report that generated a customized summary for each region and district. The report presented a high-level summary of the division, a comparison to other divisions, and details regarding how individual Store Managers were spending their time.

After the success of the first administration, the company asked us to revalidate (i.e., update) the questionnaire content periodically and to readminister the questionnaire every two years to ensure continued Store Manager compliance with company expectations.

STRUCTURED INTERVIEWS

Another self-report tool that can be used for evaluating exemption compliance is the structured interview. The same foundations of job analysis practice are used to form the basis of the structured interview. However, unlike the job analysis questionnaire, which typically contains mostly closed-ended (i.e., fixed-scale) questions, the structured interview contains mostly open-ended questions. Open-ended questions allow employees to elaborate and provide significant detail in their responses. These types of interviews can result in interesting and illustrative examples of different scenarios and circumstances. In addition, follow-up questions can be built into the tool to capture the drivers that lead to different employee behaviors. Some interviews may incorporate both open- and closed-ended questions, which can expedite the interview and provide numeric data to analyze. An example of responses to selected interview questions is provided below.

TABLE 3: EXAMPLES OF CALL CENTER EMPLOYEE STRUCTURED INTERVIEW QUESTIONS AND RESPONSES

QUESTION	RESPONSE
Auditing	
1. How do you review and evaluate your Customer Service Representatives' work? What steps do you take? What metrics or reports do you review? What do you look for in these metrics or reports?	I review key metrics to ensure that Customer Service Representatives are meeting the levels set for them. I also listen to and grade calls on a daily basis. Based on the results of the call, that is when we prepare our Disciplinary Action Reports as needed.
2. Do you audit other teams? Do you generate or review any metrics or reports for other teams? If so, what do you look for when reviewing these reports? What conclusions or information do you draw from these reports?	If I am assigned as a point of contact for all teams. I am also responsible for auditing other pods' adherence and compliance. I monitor their invalid escalations. I do this to ensure that CSRs are meeting their metrics on a daily basis. If they are not, then I decide how to handle it. One option is coaching, another is disciplinary. This is my decision, based on general guidelines which are provided to me regarding auditing and expectations.
3. How important is auditing to your job? What would be the consequences to the call center if you did not perform these audits?	I believe auditing is a very important part to my job. The consequences to the call center would be potentially devastating due to the fact that I always have to keep track of everyone's performance, quality, and coaching on a daily basis. I always have to be on top of our teams. The consequences of not auditing could lead to closure or even fines due to our federal contracts.
Autonomy	
1. How frequently do you interact with your Manager?	Daily.
2. How do you typically interact your Manager? In person, phone, email, text?	The main form of communication is email. Second is in person, then phone and text message.
3. For what purpose do you regularly interact with your Manager?	We conduct daily team meetings. Every day, within the first hour or two of our shift, our manager gets together with all the supervisors in their core, and we discuss metrics, daily game plan, and any hot-topic issues.

QUESTION	RESPONSE
4. What is the goal of these regular interactions? Are you receiving information or providing information?	It is usually both receiving and providing information. Again, if our manager has any new updates or information he needs to get out, we'll review it in our team meeting instead of communicating via email. Supervisors will also have the opportunity to provide critical updates to management in these meetings.
5. For what purposes do you interact with your Manager beyond your regular interactions? Under what circumstances would you communicate with your Manager more often or in addition to your regular interactions?	Normally the interactions with my manager are around individual agent issues (e.g., attendance, quality). For someone that is performing extremely well (e.g., one CSR had perfect attendance for a year), I may want to reward them. Any time I'm interacting with my manager in addition to our regular interactions, it is usually around specific agent issues.

The structured interview approach can be useful when studying complex and highly technical jobs that do not lend themselves to a pre-structured questionnaire with defined measurement scales. Given the large number and detailed nature of questions, structured interviews can take a significant amount of time to execute. Depending on the environment, this time requirement can limit the number of employees who can be interviewed and included in the study.

The employee responses to a structured interview can be lengthy, thus requiring a content-analysis approach to summarize. However, responses typically contain much more detail than other self-report instruments. Some find these detailed descriptions more informative and useful than numeric data. The case study below describes how we designed and implemented a structured interview tool to a group of employees involved in various stages of the design and creation of integrated circuit chips at a semiconductor company.

CASE STUDY 3: JOB ANALYSIS OF ENGINEERS AT A SEMICONDUCTOR COMPANY

A semiconductor manufacturing company was facing litigation in which plaintiffs alleged that their “engineers” were misclassified as exempt. We were asked to determine how employees in an engineering position were performing their jobs. The job class of engineer included the following six job categories: Chip Design/Hardware, Software, Chip Layout, Product Applications, Manufacturing/Operations, and Customer Relations.

As expected with six job categories, the employees included in our study held many different job titles. The organization considered them all exempt, but different employees were considered exempt under different exemptions, including the professional, administrative, computer professional, and executive exemptions. In addition, because the class of engineers had already been certified, our data collection was limited to those who “opted out” of the litigation. Given the diversity of the jobs included within this study and the technical nature of the positions, we determined that a structured interview method would be the best option to gather reliable data that addressed the key issues relevant to the various exemptions.

We started the job analysis by collecting background information about the parts of the business in which engineers worked. Through this effort, we learned that engineers worked in almost every phase of the product development cycle and that we needed to obtain significant background information about the different procedures and technologies involved in this process to adequately understand what employees in this group of jobs were actually doing. We relied on both internal and external resources, including interviews with external technology experts and industry readings.

Next, we conducted and recorded interviews with more than forty managers of the different engineering positions. Because of the technical language used during the interviews, the recordings enabled us to listen multiple times in order to accurately transcribe content.

Using the information gained from the background research and manager interviews, we developed a structured interview protocol, which asked questions about the nature of the engineer relationship with customers and other employees, the frequency and nature of supervision by their managers, the degree and nature of problem-solving required in performing tasks, the technical knowledge and expertise required to perform tasks, the degree and nature of physical and routine work performed, the extent to which engineers supervised others, and the types of decisions made and degree of autonomy in making those decisions, among other things.

The structured interview data we collected resulted in a database with extremely detailed information about the work that engineers in each of the six groups performed and specifically how it fit into the areas relevant to the exemption. We prepared a summary report detailing our findings and the significant range in job duties we found across the organization. The client relied on our report to address class certification and merits issues in the case.

Conclusion

Recent changes to the salary component of the FLSA regulations have emphasized the continued importance of the Duties Test in assessing which employees qualify for an exemption. Proactive employers may choose to evaluate how their employees’ duties are aligned with the current exemptions, in addition to salary levels. In our experience, conducting a thorough job analysis is the most effective approach to evaluating the exemption status of employees. In this article, we have provided information regarding methods we have developed and applied over many years to study employees. All research methods have strengths and weakness, so the most appropriate method depends on the specifics of an organization and the position being studied.

Disclaimer: Each of the methods presented above describe data collection options which can be used to inform job classification decisions, however, we recommend seeking legal counsel before making any decisions related to classification.

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