

Fair Labor Standards Act (FLSA) Overtime Regulations

CHECKLIST #5 – SALARY AND DUTIES TESTS FOR OUTSIDE SALES EXEMPTION FROM OVERTIME

Effective August 23, 2004

If the answers to the following two questions are “yes,” then an employee meets the outside sales exemption test.

- A. Is the employee a salesman who is customarily and regularly engaged, away from the employer’s place of business, in making sales or obtaining orders or contracts for products or services to be performed by others?

Yes _____ No _____

1. An outside salesman must generally make his/her sales at the customer’s place of business.
2. Any site used by a salesman as headquarters for sales or telephone solicitations is regarded as the employer’s place of business (i.e., salesman’s home, satellite office).
3. Temporary locations, such as hotel rooms, are not considered “the employer’s place of business,” even if paid for by the employer.
4. Indicia of outside salesman are:
 - a. significant compensation on a commission basis;
 - b. special sales training;
 - c. little or no direct or constant supervision in carrying out daily tasks; and,
 - d. a contract designation or job title that reflects sales involvement.

- B. Is the employee’s primary duty outside sales activity?

Yes _____ No _____

1. Non-exempt work would include all work time devoted to completing a sales transaction initiated by telephone, facsimile or computer (i.e., e-mail) contact with the customer.
2. Exempt work includes time devoted to personal sales calls, travel time to complete those calls and directly related activities such as preparation of proposals or promotional material, sales report completion, arranging trips and logistics and similar tasks that support personal sales calls.

3. Public relations or general employer or service promotion activities do not contribute to satisfaction of the primary duty rule.
4. Joint sales efforts require very careful consideration.