

(b) The required amount of compensation per week may be translated into equivalent amounts for periods longer than one week. For example, the \$684-per-week requirement will be met if the employee is compensated bi-weekly on a salary basis of not less than \$1,368, semimonthly on a salary basis of not less than \$1,482, or monthly on a salary basis of not less than \$2,964. However, the shortest period of payment that will meet this compensation requirement is one week.

(c) In the case of academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in § 541.204(a)(1).

(d) In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than \$27.63 an hour, as provided in § 541.400(b).

(e) In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (*see* § 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (*see* § 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (*see* § 541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

[69 FR 22260, Apr. 23, 2004, as amended at 81 FR 32550, May 23, 2016; 84 FR 51306, Sept. 27, 2019]

§ 541.601 Highly compensated employees.

(a)(1) Beginning on January 1, 2020, an employee with total annual compensation of at least \$107,432 is deemed

exempt under section 13(a)(1) of the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee as identified in subparts B, C or D of this part.

(2) Where the annual period covers periods both prior to and after January 1, 2020, the amount of total annual compensation due will be determined on a proportional basis.

(b)(1) “Total annual compensation” must include at least \$684 per week paid on a salary or fee basis as set forth in §§ 541.602 and 541.605, except that § 541.602(a)(3) shall not apply to highly compensated employees. Total annual compensation may also include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period. Total annual compensation does not include board, lodging and other facilities as defined in § 541.606, and does not include payments for medical insurance, payments for life insurance, contributions to retirement plans and the cost of other fringe benefits.

(2) If an employee’s total annual compensation does not total at least the amount specified in the applicable subsection of paragraph (a) by the last pay period of the 52-week period, the employer may, during the last pay period or within one month after the end of the 52-week period, make one final payment sufficient to achieve the required level. For example, for a 52-week period beginning January 1, 2020, an employee may earn \$90,000 in base salary, and the employer may anticipate based upon past sales that the employee also will earn \$17,432 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns \$12,000 in commissions. In this situation, the employer may within one month after the end of the year make a payment of at least \$5,432 to the employee. Any such final payment made after the end of the 52-week period may count only toward the prior year’s total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee,

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but may still qualify as exempt under subparts B, C, or D of this part.

(3) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a *pro rata* portion of the minimum amount established in paragraph (a) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment before the end of the year, of this section within one month after the end of employment.

(4) The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply.

(c) A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties. Thus, a highly compensated employee will qualify for exemption if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part. An employee may qualify as a highly compensated executive employee, for example, if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements for the executive exemption under § 541.100.

(d) This section applies only to employees whose primary duty includes performing office or non-manual work. Thus, for example, non-management production-line workers and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, laborers and other employees who perform work involving repetitive operations with their hands, physical skill and energy are not exempt under this section

no matter how highly paid they might be.

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§ 541.602 Salary basis.

(a) *General rule.* An employee will be considered to be paid on a "salary basis" within the meaning of this part if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.

(1) Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work.

(2) An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(3) Up to ten percent of the salary amount required by § 541.600(a) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions, that are paid annually or more frequently. The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply. This provision does not apply to highly compensated employees under § 541.601.

(i) If by the last pay period of the 52-week period the sum of the employee's weekly salary plus nondiscretionary bonus, incentive, and commission payments received is less than 52 times the weekly salary amount required by § 541.600(a), the employer may make one final payment sufficient to achieve the required level no later than the