

**FEDERAL/STATE OVERTIME COVERAGE  
BY OCCUPATION OR CATEGORY OF WORKERS**

<b>OCCUPATION/CATEGORY</b>	<b>FEDERAL</b>  <b>Fair Labor Standards Act (FLSA) and 29 CFR Part 541</b>	<b>STATE (HAWAII)</b>  <b>Chapter 387, HRS, and Chapter 12-22, Hawaii Administrative Rules</b>	<b>EFFECT</b>
<b>Blue Collar Workers</b>	<p>The exemptions provided by FLSA Section 13(a)(1) do not apply to manual laborers or other “blue-collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. Such nonexempt “blue-collar” employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training.</p> <p>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 Section 13(a)(1) of the FLSA nor the regulations at 29 CFR Part 541, no matter how highly paid they might be.</p> <p><a href="http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17i_blue_collar.htm">http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17i_blue_collar.htm</a></p>	Same interpretation as federal.	<p>Blue collar workers are not exempt from overtime under federal and state wage and hour laws unless other exemptions apply.</p> <p>As a general rule, “blue collar” workers are entitled to overtime pay. If, however, an employee falls into one of the categories of employment not subject to the Hawaii wage and hour law, the employee will not be entitled to overtime. Such categories include:</p> <ul style="list-style-type: none"> <li>Certain agricultural employees;</li> <li>Certain domestic service employees;</li> <li>Employment by family members;</li> <li>Certain employees relating to propagating, catching, farming aquatic animals or vegetable life;</li> <li>Seamen;</li> <li>Certain drivers of vehicles carrying passengers;</li> <li>Golf caddies;</li> </ul>

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			Certain students; Certain seasonal youth camp staff members; and Certain automobile salespersons.
<b>Computer Employee</b>	<p>To qualify for the computer employee exemption, the following tests must be met:</p> <p><b>Salary requirement</b></p> <ul style="list-style-type: none"> <li>▪ The employee must be compensated <i>either</i> on a <a href="#">salary</a> or fee basis at a rate not less than \$455 per week <i>or</i>, if compensated on an hourly basis, at a rate not less than \$27.63 an hour.</li> </ul> <p><b>Duties</b></p> <ul style="list-style-type: none"> <li>▪ 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;</li> <li>▪ The employee’s primary duty must consist of:               <ol style="list-style-type: none"> <li>1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;</li> <li>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;</li> <li>3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or</li> <li>4) A combination of the aforementioned duties, the performance of which requires the same level of skills.</li> </ol> </li> </ul>	No specific exemption for computer employee.	If a computer employee is exempt under federal law, the employee would not be automatically exempt under state law, unless that employee's salary and duties meet the requirements of another exemption. This is a case-by-case determination.

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<b>Construction Workers</b>	<p>The exemptions provided by FLSA Section 13(a)(1) do not apply to manual laborers or other “blue collar” workers, including non-management construction workers, who perform work involving repetitive operations with their hands, physical skill and energy. Such nonexempt “blue collar” employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training, not through the prolonged course of specialized intellectual instruction required for exempt learned professional employees. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, crafts workers, operating engineers, longshore workers, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under Section 13(a)(1) of the FLSA and the regulations at 29 CFR Part 541, no matter how highly paid they might be.</p>	<p>Construction workers are generally covered under the FLSA. Overtime provisions of Chapter 104, HRS, also apply to laborers and mechanics performing work on State and county government construction projects.</p>	<p>Generally, construction workers are entitled to overtime under federal and state wage and hour laws.</p>
<b>Financial Services Industry Employees</b>	<p>Employees in the financial services industry generally meet the duties requirements for the administrative exemption and are not entitled to overtime pay if their duties include work such as collecting and analyzing information regarding the customer's income, assets, investment or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing or promoting the employer's financial products. However, an employee whose primary duty is selling financial products does not qualify for the administrative exemption. In applying the exemption, it does not matter whether the employee's activities are aimed at an end user or an intermediary. The status of financial services</p>	<p>For overtime purposes, financial services industry employers are generally subject to the FLSA rather than the Hawaii Wage and Hour Law due to their interstate commerce activity and/or their annual dollar volume is \$500,000 or more.</p>	<p>The same kinds of factors considered under FLSA are considered under the state wage and hour law. As with any position, it is the job duties, not the job title, that will be determinative.</p>

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	employees is based on the duties they perform, not on the identity of the customer they serve.		
<b>Highly Compensated Employee</b>	<p>The regulations contain a special rule for “highly-compensated” workers who are paid total annual compensation of \$100,000 or more. A highly compensated employee is deemed exempt under Section 13(a)(1) if:</p> <p><b>Salary requirement</b> The employee earns total annual compensation of \$100,000 or more, which includes at least \$455 per week paid on a salary basis;</p> <p><b>Duties</b> The employee’s primary duty includes performing office or non-manual work; and The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.</p> <p><a href="http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17h_highly_comp.htm">http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17h_highly_comp.htm</a></p>	No specific exemption for highly compensated employee. However, an individual who receives \$2,000 or more per month <i>guaranteed</i> compensation is exempt, regardless of occupation. Commissions and bonuses are not considered guaranteed compensation.	A highly compensated employee may be exempt from overtime under FLSA, but may be covered under state law if the employee receives less than \$2,000 a month in <i>guaranteed</i> compensation and does not meet the requirements under "white collar" exemptions.
<b>Insurance Claims Adjusters</b>	<p>Whether they work for an insurance company or other type of company, insurance claims adjusters generally meet the duties requirements for the administrative exemption and are not entitled to overtime pay if their duties include activities such as interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.</p> <p>The status of an insurance claims adjuster, however, does not rely on the "claims adjuster" job title alone. There must be a case-by-case assessment to determine whether the employee's</p>	For overtime purposes, insurance companies are generally subject to the FLSA rather than the Hawaii Wage and Hour Law because their annual dollar volume is \$500,000 or more, and/or they are involved interstate commerce.	The same kinds of factors considered under the FLSA are considered under the state wage and hour law. As with any position, it is the job duties, not the job title, that will be determinative.

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	<p>duties meet the requirements for the exemption.</p> <p><a href="http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs171_claims_adjusters.htm">http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs171_claims_adjusters.htm</a></p>		
	<p>The duties test have not changed for the creative professional exemption, which is the common exemption under which journalists and reporters are tested. The creative professional exemption applies if the employee's <u>primary duty</u> is work requiring invention, imagination, originality or talent in a recognized field of artistic endeavor (e.g., the fields of music, acting, writing and the graphic arts), as opposed to routine mental, manual, mechanical or physical work. Work that can be produced by a person by a person with general manual or intellectual ability and training is not exempt as <i>creative</i>. The requirement of creativity distinguishes the work of a creative professional from work that primarily depends on intelligence, diligence and accuracy. Since employees' duties vary widely, and the creative professional exemption depends on how much invention, imagination, originality or talent is actually exercised by the employee, the determination of whether an employee is exempt as creative professional must be made on a case-by-case basis.</p> <p>Relying on federal case law, the final regulations clarify that employees of newspapers, magazines, television and other media are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product. For example, reporters who rewrite press releases or who write standard recounts of public information by gathering facts on routine community events are not exempt creative professionals. Reporters whose work products are subject to substantial control by their employer also do not qualify as exempt creative professionals. However, employees may be exempt creative professionals if their primary duty is to perform on the air in radio, television or other electronic media; to</p>	<p>Must meet the requirements specified in §12-20-5, Hawaii Administrative Rules, to be exempt as a professional. Same interpretation as FLSA.</p>	<p>The federal rules have not changed for this category. Determinations made on a case-by-case basis.</p>

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	<p>conduct investigative interviews; to analyze or interpret public events; to write editorial, opinion columns or other commentary; or to act as a narrator or commentator. Thus, journalists' duties vary along a spectrum of from the nonexempt to the exempt. The less creativity and originality involved in their efforts, and the more control exercised by the employer, the less likely journalists' duties vary along a spectrum from the nonexempt to the exempt. The less creativity and originality involved in their efforts, and the more control exercised by the employer, the less likely journalists are to be considered exempt. There is no "across the board" exemption for journalists; nor has there ever been. Rather, each determination must be made on a case-by-case basis, as is the case with all job classifications. The majority of journalists, who simply collect and organize public information, or do not contribute a unique or creative interpretation or analysis, are not likely to be exempt. Nothing in the new rules relieves employers from their contractual obligations to journalists and reporters under collective bargaining agreements. In addition, journalists and reporters paid by the hour are entitled to overtime.</p>		
<b>Law or Medicine Practitioners</b>	<p><b>Salary requirement</b> The salary and salary basis requirements do not apply to bona fide practitioners of law or medicine.</p> <p><b>Duties</b> An employee holding a valid license or certificate permitting the practice of law or medicine is exempt if the employee is actually engaged in such a practice. An employee who holds the requisite academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession.</p> <p><a href="http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17d_professional.htm">http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17d_professional.htm</a></p>	<p><b>Salary requirement</b> The salary and fixed fee requirements do not apply to a person who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof or who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or residency program pursuant to the practice of medicine or any of its branches.</p> <p><b>Duties</b> The employee's primary duty consists of</p>	

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		<p>the performance of:            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; or            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 individual; or            Whose work requires the consistent exercise of discretion and judgment in its performance; and            Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.</p>	
<b>Nurses</b>	<p>Registered nurses who are paid on an hourly basis should receive overtime pay. However, registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption, and if paid on a salary basis of at least \$455 per week, may be classified as exempt.            Licensed practical nurses and other similar health care</p>	<p>Basically same as federal. Registered nurses receiving a salary would be exempt from overtime; licensed practical nurses generally would not qualify as exempt professional.</p>	<p>Generally, registered nurses who are paid on a salary basis would be exempt from the overtime requirements under both federal and state wage and hour laws if they meet the salary and duties</p>

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	employees, however, generally do not qualify as exempt learned professionals, regardless of work experience and training, because possession of a specialized advanced academic degree is not a standard prerequisite for entry into such occupations, and are entitled to overtime pay.		tests under the professional exemption. Licensed practical nurses are generally not exempt under federal and state wage and hour laws unless other exemptions apply.
<b>Police, Fire Fighters, Paramedics &amp; Other First Responders</b>	Exemptions <i>do not</i> apply to: Police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officer, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees ("first responders"), 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.	State law does not apply to the public sector For private sector employers and employees, same interpretation as federal.	Employees of federal, state and county government are protected by the minimum wage and overtime provisions of the FLSA.
<b>Teachers</b>	<b>Salary requirement</b> The salary and salary basis requirements do not apply to bona fide teachers.  <b>Duties</b> Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of	<b>Salary requirement</b> The salary requirement shall not apply to an individual who is a bona fide teacher.  <b>Duties</b> Teachers are exempt if their primary duty consists of teaching, tutoring, instructing, or lecturing and they are employed and engaged in this activity as a teacher certified or recognized in	Teachers are likely to be treated similarly under both federal and state law.

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	gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers.	the school system or educational establishment or institution by which the teacher is employed.	
<b>Technologists and Technicians</b>	Technologists and technicians, such as engineering technicians, ultrasound technologists, licensed veterinary technicians, avionics technicians and other similar employees are not exempt under Section 13(a)(1) from the minimum wage and overtime requirements of the FLSA because they generally do not meet the requirements for the learned professional exemption. Technologists and technicians do not meet those requirements for the learned professional exemption because they do not work in <i>occupations</i> that have attained recognized professional status, which requires that an advanced specialized academic degree is a standard prerequisite for entrance into the profession.	Same as FLSA.	Generally, technicians and technologists are not exempt from overtime under federal and state wage and hour laws unless other exemptions apply.
<b>Veterans</b>	Are not exempt administrative, executive or professional employees based upon their status as veterans. Military training, for example, generally is not sufficient to meet the requirements for the professional exemption. Specifically, the learned profession requires: <ol style="list-style-type: none"> <li>1. The employee's primary duty must be to perform work requiring advanced knowledge;</li> <li>2. The advanced knowledge must be in a field of science or learning; and</li> <li>3. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.</li> </ol> No amount of military training will satisfy the requirements of the learned professional exemption because the exemption applies only to employees who are in occupations that have attained recognized professional status, which requires that an advanced specialized academic degree is a standard prerequisite for entrance into the profession. No amount of military training can turn a "blue collar" occupation or a	No specific exemption for veterans. Are not exempt administrative, executive, supervisory or professional employees based on their status as veterans.	An employee's status as a veteran has no bearing on whether the employee meets the "white collar" exemption under federal and state laws. The actual salary and duties of the employee would determine whether the employee is exempt.

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	technical field into a profession. For example, a veteran who has received substantial military training as a veteran but works on a manufacturing production line or as an engineering technician is not exempt under the FLSA.		