



## Classification of Employees as Exempt or Non-Exempt

### Classification of Employees as Exempt or Non-Exempt Policy

*Approved by and date:*

*Board of Trustees* 08/12/2019

*Executive Leadership Team* 08/02/2019

#### **Policy:**

The College President or designee, within guidelines set out in federal statutes and/or regulations, shall determine the classification of positions or employees as “exempt” or “non-exempt” for purposes of compliance with the Fair Labor Standards Act (FLSA). Generally, executive administrative, faculty, professional, and supervisory personnel are considered “exempt” under FLSA.

#### **Procedures:**

*Approved by and date:*

*Executive Leadership Team* 08/29/2022

The minimum wage and overtime provisions of the FLSA do not apply to any employee employed in a bona fide executive, administrative, or professional capacity. Thus, these employees are classified as “exempt” employees. All other employees are classified as “non-exempt” and are subject to minimum wage and overtime provisions of the FLSA.

Non-exempt employees are often thought of as hourly employees; however, there is no requirement that they be paid on an hourly basis. Under the FLSA, non-exempt employees can be paid hourly or be paid a salary as long as their weekly compensation equals at least minimum wage for all hours worked and overtime is paid for hours in excess of 40 in a workweek.

KC pays full-time non-exempt employees on a salary basis, thus considering them “salaried non-exempt.” Although KC chooses to pay full-time non-exempt employees a salary, the College must still track and record actual time worked by employees in this category; and, if overtime is worked, the College must calculate the regular hourly rate on which the overtime rate is based and pay for all overtime worked.

Classification of a position as “exempt” or “non-exempt” will be included on the official job description/posting and will be documented as such in the employee’s personnel file.

Kilgore College adheres to the following definitions in determining if an employee is eligible to be classified as exempt:

#### Administrative Employee

The term “employee employed in a bona fide administrative capacity” shall mean any employee:

- a. Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities;

- b. Whose primary duty is the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers; and
- c. Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

### Executive Employee

The term "employee employed in a bona fide executive capacity" shall mean any employee:

- a. Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities;
- b. Whose primary duty is to manage the College or a recognized department of the College;
- c. Regularly and customarily directs the work of at least two full-time employees or their equivalent; and
- d. Has authority to hire and/or fire other employees, or his/her recommendations or suggestions regarding the hiring, firing, advancement, promotion, or other change of status of other employees must be given significant weight.

### Academic Administrator

The term "employee employed in a bona fide administrative capacity" also includes an employee:

- a. Who is compensated for services on a salary or fee basis at a rate of not less than \$684 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the educational establishment by which employed; and
- b. Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

"Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions of the institution of higher education rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

- a. Employees engaged in academic administrative functions include:
- b. Department heads in institutions of higher education responsible for the administration of instructional departments;
- c. Academic counselors and advisors who perform work such as assisting students with academic problems and advising students concerning degree requirements; and
- d. Other employees with similar responsibilities.

Jobs relating to building management and maintenance do not perform academic administrative functions, although such employees may qualify for another exemption.

### Professional Employee

An "employee employed in a bona fide professional capacity" shall mean any employee:

- a. Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and
- b. Whose primary duty is the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual, and which includes consistent exercise of discretion and judgment;

- c. The advanced knowledge must be in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

"Work requiring advanced knowledge" cannot be attained at the high school level. Professional work is distinguished from work involving routine mental, manual, mechanical or physical work. A professional employee generally uses the advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances.

"Fields of science or learning" include law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other occupations that have a recognized professional status.

"Customarily acquired by a prolonged course of specialized intellectual instruction" generally means having the appropriate academic degree. This exemption does not apply to occupations in which most employees acquire their skill by experience rather than by advanced specialized intellectual instruction.

### Faculty

Teachers/Faculty are exempt if they have a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed.

The term "educational establishment" means an institution of higher education or other educational institution. The salary level and salary basis requirements do not apply to teachers/faculty.

Exempt teachers include: regular academic teachers; teachers of skilled and semi-skilled trades and occupations; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

### Creative Professional

An "Employee employed in a bona fide professional capacity" shall also mean any employee:

- a. Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and
- b. Whose primary duty is the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

"Recognized field of artistic or creative endeavor" includes fields such as music, writing, acting, and the graphic arts. These requirements are determined on a case-by-case basis but are generally met by actors, musicians, composers, soloists, certain painters, writers, essayists, cartoonists, and novelists.

### Computer Employees

Computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field are eligible for exemption as professionals. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption. The exemption applies to any computer employee compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging or other facilities and to any computer

employee compensated on an hourly basis at a rate not less than \$27.63 an hour. In addition, the exemption applies only to computer employees whose primary duty consists of:

- a. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
- b. 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;
- c. design specifications;
- d. The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
- e. A combination of the aforementioned duties, the performance of which requires the same level of skills.

Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties that qualify the employees for exemption under 29 C.F.R. Part 541, Subpart B or Subpart C. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific, or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion, or other change of status of the other programmers are given particular weight, generally meets the duties requirements for the executive exemption.

### Salary Basis

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis as described in 29 C.F.R. 541.600, unless the employee is a teacher. Subject to the exceptions listed in 29 C.F.R. 541.602, an 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. An employer that makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay exempt employees on a salary basis.

### Highly Compensated Employees

An employee with total annual compensation, as described by 29 C.F.R. 541.601, of at least \$100,000 is deemed exempt 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 29 C.F.R. Part 541, Subparts B, C, or D.

### Wage and Hour Records

Kilgore College will maintain and preserve payroll or other records for non-exempt employees containing the information required by the regulations under the FLSA.