Exempt Analysis – Administrative

	FLSA Test	Position Meets Test?
Exempt (Administrative Exemption EE)	**Salary earnings** - must earn a salary of at least $684/week	
	Duties – Does the employee's "primary duty" consist of the performance of office or non-manual work directly related to the mgmt or general business operations of the employer or the employer's customers?	
	Primary duty is the "chief" duty rather than over one-half of the employee's work time • Relative importance of the employee's administrative duties as compared with other types of duties; • Frequency with which the employee exercises discretionary powers; • Employee's relative freedom from supervision; • The relationship between the ee's salary and the wages paid other ees for the same kind of nonexempt work performed (pg 149 of FLSA Handbook)	
	29 C.F.R. 541.201(b) provides a list of functional areas generally directly related to management or general business operations, including: • Tax, finance, accounting, budgeting, auditing, insurance • Quality control, purchasing, procurement • Advertising and Marketing • Research • Safety and health • Personnel management/HR, employee benefits, labor relations • Public relations/govt. relations • Computer network, internet and database administration • Legal and regulatory compliance	
	Exercise of discretion – Does the employee have a primary duty that includes the exercise of discretion and independent judgment with respect to matters of significance?	
	29 C.F.R. 541.202(b) factors to consider when	

Pg. 154 of FLSA Handbook reads although a case-specific analysis is required, it is generally likely that ees who meet at least 2-3 of these 10 factors are exercising discretion and independent judgment. And, although the regs do not expressly say so, it is nonetheless likely to be a sufficient if a worker's duties meet just one factor, provided the discretion exercised relates to a matter of significance and is not an incidental part of the job.	determining whether an ee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: • Whether the ee has authority to formulate, affect, interpret or implement mgmt policies or operating practices? • Whether the ee carries out major assignments in conducting the operations of the business • Whether ee performs work that affects business operations to a substantial degree, even if the ee's assignments are related to the operation of a particular segment of business • Whether the ee has authority to waive or deviate from establishes policies and procedures without prior approval; • Whether the ee has authority to negotiate and bind the company on significant matters? • Whether the ee provides consultation or expert advice to mgmt? • Whether the ee is involved in planning long- or short-term business objectives? • Whether the ee investigates and resolves matters of significance on behalf of mgmt? • Whether ee represents the company in handling complaints, arbitrating disputes or resolving grievances.	

Signature _____ Date _____

Print Name _____

Signature _____ Date _____

Print Name _____

Signature _____ Date _____

Print Name _____

LMC
LEAGUE of MINNESOTA CITIES

INFORMATION MEMO

Fair Labor Standards Act: Determining Exempt vs. Non-Exempt Status

Learn how to determine which employees are covered (non-exempt employees) and which employees are not covered (exempt employees) under the Fair Labor Standards Act. Understand the two tests (salary test and duties test) that qualify an employee as exempt and become familiar with general definitions and guidelines of this law.

RELEVANT LINKS:

29 U.S.C. § 201-219.

See LMC information memos *An Overview of the Fair Labor Standards Act (FLSA).* and *Police and Fire Employees and the Fair Labor Standards Act (FLSA).*

Minn. R. Ch. 5200.
Minn. Stat. § 177.21.
Minn. Stat. Ch. 181.

I. Coverage

The federal Fair Labor Standards Act (FLSA) requires, among other things, that cities compensate covered employees at the rate of time-and-one-half for hours worked over 40 in one workweek. In Minnesota, the primary statute governing minimum wage, overtime and recordkeeping is the Minnesota Fair Labor Standards Act (MLFSA). In general, an employer must follow the law which provides a greater benefit to the employee. In this memo you will learn which employees are covered (non-exempt) employees and which are not covered (exempt) employees. However, police and fire department employees have some unique exemptions discussed elsewhere.

All cities are covered by the FLSA, but some employees are "exempt" from the overtime provisions of the act. To be "exempt," employees must meet both of two separate tests:

29 C.F.R. § 541.700(a)

- A duties test. Whether the employee's primary duty meets the definition of the particular exemption.
- A salary basis test.

Non-exempt employees must be paid overtime for all hours worked over 40 in one workweek; while exempt employees do not earn overtime. Being "salaried" does not mean the same thing as being "exempt." With a few exceptions (e.g., doctors, lawyers), any employee who does not earn $684 per week is not exempt.

U.S. Dep't of Labor: Final Rule: Overtime Update.

State of Nev. Vs. U.S. Dep't of Labor, Civil Action No. 4:16-CV-00731.

On September 24, 2019, the Department of Labor announced a final rule raising the salary threshold for the FLSA's "white collar" exemption from $455/week ($23,660/annually) to $684/week (equivalent to $35,568 /annually). The effective date was January 1, 2020, and with this change employers must ensure exempt employees' salaries meet this threshold as of January 1, 2020 or transition them to non-exempt status with eligibility for overtime.

145 University Ave. West
Saint Paul, MN 55103-2044
www.lmc.org
(651) 281-1200 or (800) 925-1122

3/15/2023

RELEVANT LINKS:

Beyond raising the salary threshold, the new rule permits employers to satisfy up to 10% of the threshold through nondiscretionary bonuses and incentive payments (including commissions), provided such payments are made at least annually. If an employee does not earn enough in nondiscretionary bonus or incentive payments in a given year (52-week period) to retain his or her exempt status, the Department permits the employer to make a "catch-up" payment within one pay period of the end of the 52-week period. This payment may be up to 10 percent of the total standard salary level for the preceding 52-week period. Any such catch-up payment will count only toward the prior year's salary amount and not toward the salary amount in the year in which it is paid. Additionally, the DOL raised the "highly compensated employee" salary threshold from $100,000 to $107,432.

II. Duties test

29 U.S.C. § 213.

There are generally four types of exemptions used by cities.

Employees must meet the criteria outlined in one of the following four exemptions (executive, administrative, professional, and computer) in order to meet the "duties" test and be considered exempt. There are additional special considerations for performing a combination of exempt duties and for highly compensated individuals.

A. Executive duties

29 C.F.R. § 541.100.

Executive employees must:

See Appendix A flow chart, "Executive Exemption under FLSA". U.S. Dep't of Labor: Final Rule: Overtime Update. 29 C.F.R § 541.100(a).

- Be paid at least $684 per week on a salary basis (equivalent to $35,568/annually) as of January 1, 2020.
- "Customarily and regularly" supervise two or more employees (at least 80 hours' worth of employee work per week).
  The regulations define "customarily and regularly" as a "frequency greater than occasional but …less than constant." "Tasks or work performed 'customarily and regularly' includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks."

29 C.F.R. § 541.701.

- Have the authority to hire or fire other employees or have their recommendations on hiring/firing, advancement, promotion, or other change of status decisions be given "particular weight."

29 C.F.R. § 541.102.

"Managing" includes spending approximately 50 percent of work time on management activities such as:

- Interviewing, selecting, and training employees.
- Setting and adjusting employee rates of pay and hours of work.

RELEVANT LINKS:

- Directing employee work.
- Evaluating employee performance.
- Handling employee complaints/grievances.
- Disciplining employees.
- Planning work and determining techniques.
- Determining materials, supplies, equipment, and tools to be used.
- Planning and controlling the budget.
- Providing for employee safety.

29 C.F.R. § 541.103.

"Department or subdivision" means a unit with permanent status and a continuing function. For example, in a larger city, there may be separate subdivisions within the public works department for "streets," "utilities," and "parks," and these subdivisions may meet the definition of a "department or subdivision" under the FLSA regulations. However, "department or subdivision" does not mean a group of employees assigned from time to time to work as a team on a specific job or project.

29 C.F.R. § 541.105.

"Particular weight" refers to the requirement that a certain amount of consideration be given to an employee's recommendations if that employee's position is to meet the executive exemption. The following questions are used to determine "particular weight":

- Is it part of the employee's job duties to make hiring/firing/job change recommendations?
- How often does the employee make such recommendations?
- How often are the employee's recommendations taken (vs. overridden) by the council or higher management?

See section IV-B.

An employee can still meet the executive exemption duties test if he or she sometimes performs non-exempt work (e.g., the labor or production work of the employees he or she supervises). However, the employee's "primary duty" must be management.

B. Administrative duties

29 C.F.R. § 541.200.
29 C.F.R. § 541.201(a).

The administrative exemption is meant to apply to employees who have the primary duty of performing office or non-manual work directly related to the management or general business operations of the employer (the city). Administrative employees must:

See Appendix B flow chart, "Administrative Exemption under FLSA". U.S. Dep't of Labor. U.S. Dep't of Labor: Final Rule: Overtime Update.

- Be paid at least $684 per week on a salary basis (equivalent to $35,568/annually) as of January 1, 2020.

RELEVANT LINKS:

29 C.F.R. § 541.202(a).

The office or non-manual work must require the exercise of discretion and independent judgment on significant matters. Discretion and independent judgment involves comparing and evaluating possible courses of conduct, and action in decision making, which is the opposite of routine work.

"Matters of significance" are defined as the "level of importance or consequence of the work performed."

29 C.F.R. § 541.201.

If the employee's primary duty is to administer the business affairs of a city, the employee is likely an "administrator." If the employee's primary duty is providing the goods/services of the organization, the employee is likely a "production" employee. Work performed in areas such as finance, accounting, insurance, purchasing, human resources, computer network, Internet, and database administration is likely to be seen as administering the business affairs of the city.

29 C.F.R. § 541.202.

To determine whether an employee exercises discretion and independent judgment on significant matters, the city should ask these questions:

- Does the employee have authority to formulate, interpret, or implement management policies?
- Does the employee carry out major assignments and perform work that affects business operations to a substantial degree?
- Does the employee have authority to commit the city in matters with a significant financial impact?
- Does the employee have authority to waive or deviate from established policies and procedures without prior approval?
- Does the employee have authority to negotiate and bind the company on significant matters?
- Does the employee provide expert advice to management?
- Is the employee involved in planning long- or short-term business objectives?
- Does the employee investigate and resolve important matters for management?
- Does the employee handle complaints, arbitrate disputes, or resolve grievances?

The more "yes" answers to the above questions, the more likely the employee would be considered exempt under the administrative exemption.

29 C.F.R. § 541.202(c).

An employee can still qualify for the administrative exemption even if his or her decisions or recommendations are reviewed at a higher level and occasionally revised or reversed.

RELEVANT LINKS:

C. Professional exemption

29 C.F.R. § 541.300.

Professional employees must:

See Appendix C flow chart, "Professional Exemption under FLSA". U.S. Dep't of Labor: U.S. Dep't of Labor: Final Rule: Overtime Update.

Be paid at least $684 per week on a salary basis (equivalent to $35,568/annually) as of January 1, 2020.

Primarily perform work that requires knowledge of an advanced type in a field of science or learning ("learned professionals"), or work requiring invention, imagination, originality, or talent in a recognized artistic or creative field ("creative professionals").

29 C.F.R. § 541.301.

In general, to meet the "learned professional" definition, the employee must do work that is mostly intellectual and requires the consistent exercise of discretion and judgment (not routine mental, manual, mechanical, or physical work). The employee must use the advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances. Advanced knowledge cannot be obtained at the high school level.

Lawyers, doctors, accountants (but not accounting clerks or bookkeepers), and engineers are examples of professionals that are likely to meet the requirements of this exemption. Occupations that can be performed with only the general knowledge of an academic degree in any field are not likely to qualify under this exemption. Nor are occupations in which the employees generally learn "on-the-job" rather than by obtaining an advanced degree.

Dep't of Labor, Wage & Hour Div., Fact Sheet 17D: Exemption for Professional Employees Under the Fair Labor Standards Act (FLSA).
29 C.F.R. § 541.303.
29 C.F.R. § 541.304.

Keep in mind the salary basis test does not apply to bona fide teachers, doctors, or lawyers.

29 C.F.R. § 541.302.

To qualify for the "creative professionals" exemption, the employee must perform work in fields such as music, writing, acting, and graphic arts. These must be determined on a case-by-case basis; cities may want to contact the League or work with a consultant/attorney in determining these exemptions.

D. Computer exemption

While Minnesota law also exempts anyone employed in a bona fide executive, administrative, or professional capacity from overtime pay requirements, the state does not exempt computer systems analysts, programmers, software engineers, or other similarly skilled workers from its minimum wage or overtime requirements like Federal law does.

RELEVANT LINKS:

Thus, assuming the computer employee does not meet the other exemptions (executive, administrative or professional), that employee in Minnesota would be eligible for minimum wage as well as overtime pay.

29 C.F.R. § 541.400.

For reference, under federal FLSA computer employees must meet the following tests:

See Appendix D flow chart, "Computer Exemption under FLSA".
U.S. Dep't of Labor: Final Rule: Overtime Update.
29 C.F.R. § 541.600(d).

Be paid at least $684 per week on a salary basis or at least $27.63/hour if paid on an hourly basis (equivalent to $35,568/annually) as of January 1, 2020.

Perform work in the area of computer systems analysis, computer programming, or computer software engineering.

Have a primary duty consisting of:

- Using systems analysis techniques and procedures to determine hardware, software, or system-functional specifications.
- Designing, developing, documenting, analyzing, creating, testing, or modifying computer systems or programs based on and related to user or system design specifications.
- Designing, documenting, testing, creating, or modifying computer programs related to machine operating systems.
- A combination of the above duties requiring the same level of skills.

E. Combination exemption

29 C.F.R. § 541.708.

U.S. Dep't of Labor: Final Rule: Overtime Update.

Employees who perform a combination of various types of exempt duties may qualify for exemption if the exempt duties, taken altogether, comprise the employee's primary duty. However, the employee must still be paid at least $684 per week (equivalent to $35,568/annually) as of January 1, 2020.

F. Highly compensated employees

29 C.F.R. § 541.601.

U.S. Dep't of Labor: Final Rule: Overtime Update.

An employee who earns $107,432/year is exempt if the employee regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee. The employee must meet the salary basis test and be paid at least a total compensation of at least $107,432, which includes at least $684 per week paid on a salary basis. Fringe benefits may not be counted toward the $107,432/year amount. This exemption applies only to employees whose primary duty includes performing office or non-manual work. Therefore, employees who perform physical work, such as maintenance workers and laborers, do not qualify for this exemption, no matter how much they earn.

RELEVANT LINKS:

III. Salary basis

29 C.F.R. § 541.602(a).

To be compensated on a salary basis, the employee:

- Must receive a predetermined full amount of pay each pay period, without regard to the number of days or hours worked. The employee must be paid at least $684 per week (equivalent to $35,568/annually) as of January 1, 2020.
- Cannot be paid by the hour.
- Cannot be subject to deductions from pay based on quality or quantity of work.
- Must receive the full salary for any week in which any work is performed.

29 C.F.R. § 541.602(b).

Deductions from the weekly salary can be made when:

- The employee is absent for a day or more for personal reasons unrelated to illness or injury.

29 C.F.R. § 541.602(b) (5).

- The employer imposes penalties for a major safety violation (e.g., suspension without pay). The suspension must be for a violation of workplace conduct rules and be imposed pursuant to a written policy, applying to all employees.
- No work is performed in that week.

29 C.F.R. § 541.710(a).

Public-sector employers who have a personal leave and sick leave system that employees must use for partial-day absences due to personal reasons or illness/injury can make deductions for these partial-day absences when:

- Accrued leave is exhausted, and the employee takes a partial or full day off.
- The employee did not request paid leave, or the paid leave was denied, but the employee still takes the time off as unpaid leave (partial or full day).
- The employee requests the use of unpaid leave (partial or full day off).

29 C.F.R. § 541.710(b).

Deductions from the pay of an exempt employee of a public agency for absences due to budget-required leave-without-pay programs shall not disqualify the employee from being paid "on a salary basis" except in the workweek in which the budget-required leave without pay occurs and for which the employee's pay is accordingly reduced.

29 C.F.R § 541.604(a).

A city may pay an exempt employee extra compensation for additional hours worked beyond the person's normal work schedule. Paying the extra compensation, on any basis, even time-and-one-half, does not change the employee's designation as an exempt employee, assuming that the position has met both the salary and duties tests.

RELEVANT LINKS:

29 C.F.R. § 541.602(b)(3).

The city may not dock an exempt employee's wages for an absence due to jury duty, attendance as a subpoenaed witness, or for a temporary military leave. However, if the city does not provide paid time for these situations, the only "penalty" is that the employee will not be considered exempt for the week in which the absence occurs; in most of these situations, the employee is unlikely to work overtime.

The city also may offset from paid time any amount paid to the employee for the service.

U.S. Dep't of Labor: Final Rule: Overtime Update.

Part-time employees must meet the same requirements as full-time employees to be exempt, including the requirement to be paid at least $684/week (equivalent to $35,568/annually) as of January 1, 2020.

29 C.F. R. § 541.603(d).

In 2004, the U.S. Department of Labor amended the regulations to provide a "safe harbor" for improper salary deductions. An employer who violates the salary basis test by making an improper deduction in an exempt employee's paycheck can avoid liability by:

Overtime and Compensatory Time, LMC Model Policy.

- Maintaining a clearly communicated policy prohibiting improper pay deductions.
- Including a complaint mechanism in the policy.
- Reimbursing employees for the improper pay deduction.
- Making a good faith commitment to comply in the future.

IV. General definitions and guidelines

A. Exempt vs. non-exempt work

29 C.F.R. § 541.707.

Exempt work is the work performed by executive, administrative, professional, and computer employees. The definition of exempt work includes "closely related work" that exempt employees perform. An example of "closely related work" is when the finance director uses computer software to prepare a budget presentation for the city council. While technically this may be a non-exempt duty, it is closely related to his or her exempt duty of preparing the budget. By definition, any work that is not exempt work is non-exempt work.

B. Primary duty

29 C.F.R. § 541.700.

To qualify for any of the above exemptions, an employee's primary duty must be executive, administrative, professional, or computer work.

Primary duty means the principal, main, major, or most important duty that an employee performs. Factors to consider include:

RELEVANT LINKS:

- The relative importance of the exempt duties compared with other types of duties. (If the job exists mainly for the purpose of performing the exempt duties, it is likely to be considered exempt).
- How much time the employee spends performing exempt work. (Ideally it should be 50 percent or more of the time, but this is not an absolute requirement).
- How much supervision the employee receives and how free the employee is to determine how to spend his or her time. (The more independence and freedom, the more likely it is to be considered exempt).
- The relationship between the employee's salary and the wages paid to other employees for the kind of non-exempt work performed by the employee. (If the employee's pay is relatively close to the level of non-exempt workers, this may harm the employee's chance of being considered exempt).

V. Special exemptions

A. Separate seasonal amusement and recreational establishments

29 U.S.C. § 213(a)(3).

Employees working in separate seasonal amusement and recreational establishments are exempt from the federal wage and hour law if the establishment is physically separated from the rest of the city's operations, either by distance or structurally (e.g., a fence). In addition, it must be open no more than seven months of the year, or its average receipts for any six months of the preceding year must not be more than one-third of its average receipts for the other six months of the year.

Minn. Stat. § 177.24.

If the city does not meet this federal exemption, and meets the large employer definition, then effective January 1, 2023, the city will pay $10.59 per hour (up $0.26/hour from $10.33 per hour in 2022), and small employers will pay at least $8.63 per hour (up $0.21/hour from $8.42 per hour in 2022). The League generally advises cities with a total budget of $500,000 or more to comply with the higher Minnesota minimum wage rate (i.e., as of January 1, 2023, paying the $10.59 hour rate).

Beginning in 2017 and each year after, the Department of Labor and Industry determines with feedback of stakeholders any appropriate minimum wage increase. The minimum wage increase, if any, will be effective in August of the following year. If it does meet this federal exemption, one or more of the following state law exemptions and provisions may apply:

RELEVANT LINKS:

Minn. Stat. § 177.23 subd. 7(14).

- The city is not required to pay minimum wage/overtime to any individual under 18 working less than 20 hours per workweek for a city as part of a recreational program.
- Effective Jan. 1, 2023, Minnesota's minimum wage increases to $10.59 (up $0.26/hour from $10.33 per hour in 2022) or if the city's total budget is $500,000 or more, and to at least $8.63 per hour (up $0.21/hour from $8.42/hour in 2022) for small employers if the city's total budget is under $500,000. In addition, during the first 90-days of training, as of January 1, 2023, a large employer may pay employees under the age of 20 a wage of $8.63/hour (up $0.21/hour from $8.42/hour in 2022).

  After the 90 days, the minimum hourly rate for the employee working for a large employer becomes the 2023 minimum wage rate of $10.59/hour). The city must pay time-and-one-half overtime for all hours worked over 48 in one workweek.

Minn. Stat. § 177.25.
Minn. Stat. § 177.24.

B. Occasional and sporadic employment

29 U.S.C. § 207(p)(2).

Employees who freely choose to work part-time for the city in a different job than their normal job on an occasional and sporadic basis do not need to be paid time-and-one-half for the additional hours if the duties in the two jobs are substantially different.

C. 1040/2080 Plans for unionized employees

A 1040/2080 plan provides a partial exemption from the FLSA overtime requirement. Such plans are only valid in union environments, and the parameters of the plan must be defined in a collective bargaining agreement. While a 1040/2080 plan provides the employer with increased flexibility, such plans may also present bookkeeping and payroll challenges.

29 C.F.R. § 778.602 (b).

Examples of how overtime might be calculated under a 1040/2080 plan are provided in the regulations.

1. 1040 Plans

Overtime compensation is not required for hours worked over 40 in a workweek if there is an agreement that no employee shall be employed more than 1,040 hours during a period of 26 consecutive weeks.

When such a plan is in place, unionized employees can work an average of 40 hours per workweek (over the 26-week period, for a total of 1,040 hours) without receiving overtime compensation for each hour worked over 40 in a given week.

RELEVANT LINKS:

At the end of the 26-week period, all hours worked over 1,040 must be compensated as overtime at time-and-one-half. In addition, employees must receive overtime for any hours worked in excess of 12 hours in a workday or 56 hours in a workweek.

2. 2080 Plans

This plan is more complicated than the 1040 plan. Employees must be guaranteed at least 1,840 hours of work and may not work more than 2,240 hours in a 52-week period even if they are paid overtime. Exceeding 2,240 hours during the 52 weeks may negate the plan and retroactively entitles employees to overtime compensation for any week in which they worked more than 40 hours.

At the end of the 52 weeks, all hours worked over 2,080 must be compensated as overtime at time-and-one-half. Like the 1040 plan, employees must be paid overtime for hours worked in excess of 12 hours in a workday or 56 hours in a workweek.

Dep't of Labor, Wage & Hour Div., Admin. Ltr. Rul. (Apr. 1, 1985).

To be valid, a 1040/2080 plan must be created as part of a collective bargaining agreement. In addition, the employee representative(s) must be certified as "bona fide" by the National Labor Relations Board (NLRB). While the NLRB does not generally have jurisdiction over public employers, a Wage and Hour Opinion Letter, dated Nov. 1, 1985, advises that the NLRB has the authority to process petitions from unions of government employees requesting certification as "bona fide" for the purpose of forming a 1040/2080 plan. Petitions for certification may be filed in the NLRB Regional Office.

Minneapolis Office - National Labor Relations Board.

D. Belo Plan

29 C.F.R. § 778.404.

The Belo Plan was named after a Supreme Court decision, Walling v. Belo Corporation (316 U.S. 624 (1942)) and was given legislative sanction by FLSA amendments. A Belo Plan provides guaranteed compensation that includes a predetermined amount of overtime. It offers employees with irregular hours of work a set weekly income and enables the employer to anticipate labor costs and payroll calculations.

The U.S. Department of Labor (DOL) notes that few jobs qualify for a Belo Plan as the interpretation of "irregular hours of work" is strictly enforced.

There are a number of requirements for a valid Belo Plan, including the following:

RELEVANT LINKS:

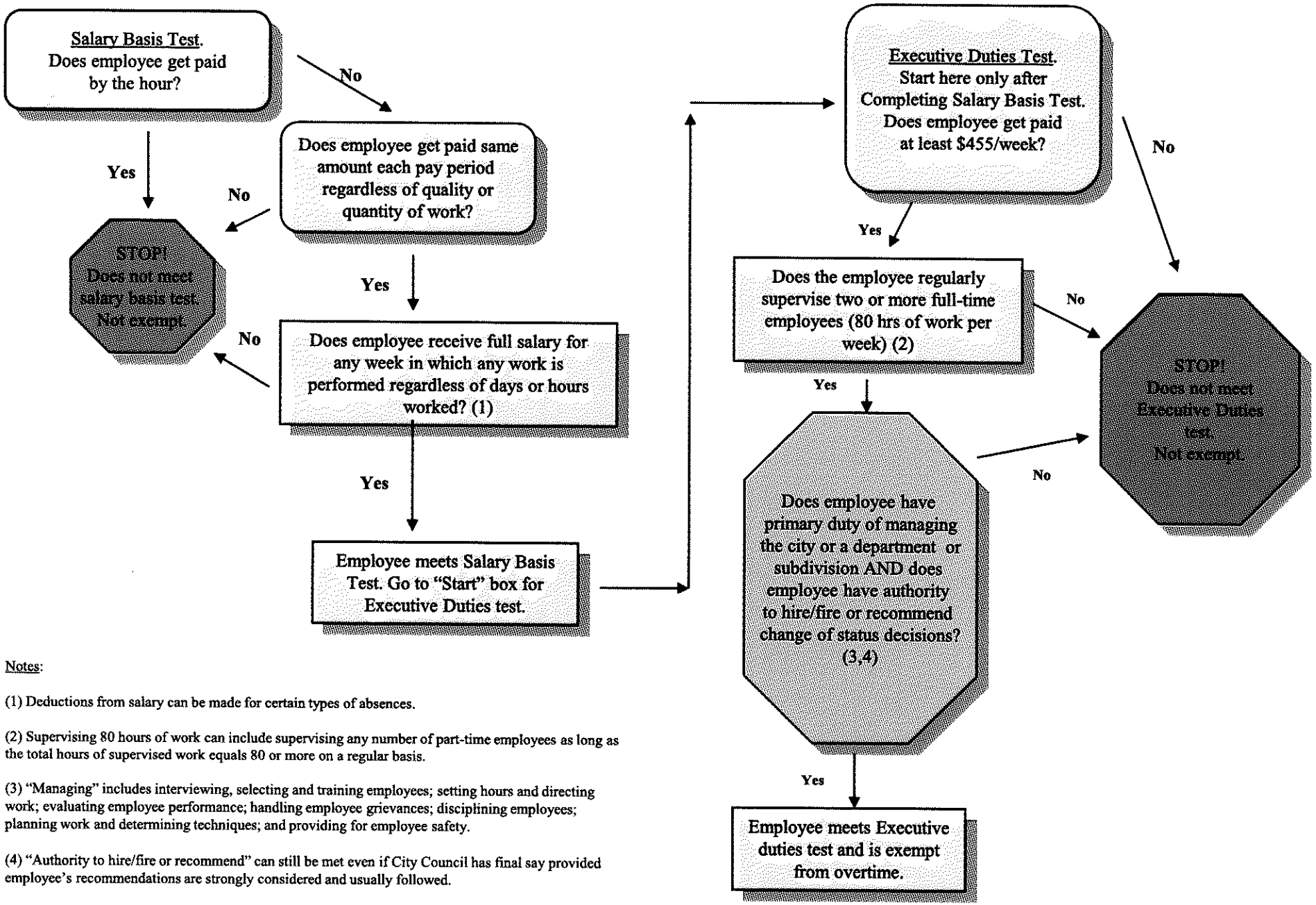
- A specific agreement must be in place between the employer and the employee(s). There is no requirement that the agreement be in writing. However, it is a good practice to put it in writing so as to avoid any ambiguity surrounding the arrangement.
- The employees' duties must necessitate irregular hours of work. In other words, the irregular hours must be dictated by the work itself, not scheduled by the employer. The employees' work must fluctuate such that they sometimes work more than 40 hours a week and other times work less than 40 hours a week. If virtually the only work hours that fluctuate are those over 40, the DOL has usually held that the irregular hours requirement is not met.
- The weekly overtime payment must be guaranteed. For example, if the Belo Plan calls for 60 hours of work and the employee works 40 hours, he or she still gets full payment. The employer must pay a premium rate at time-and-one-half for all guaranteed hours over 40, or the Belo Plan will not be valid.
- The number of weekly hours guaranteed cannot exceed 60 hours per week. Any hours worked beyond 60 in any workweek must be compensated at an additional time-and-one-half.

VI. Further assistance

If you have any additional questions, please contact the League's Human Resources and Benefits Department.

800.925.1122
651.281.1200
HRbenefits@lmc.org

Appendix A: Executive Exemption under FLSA



Notes:

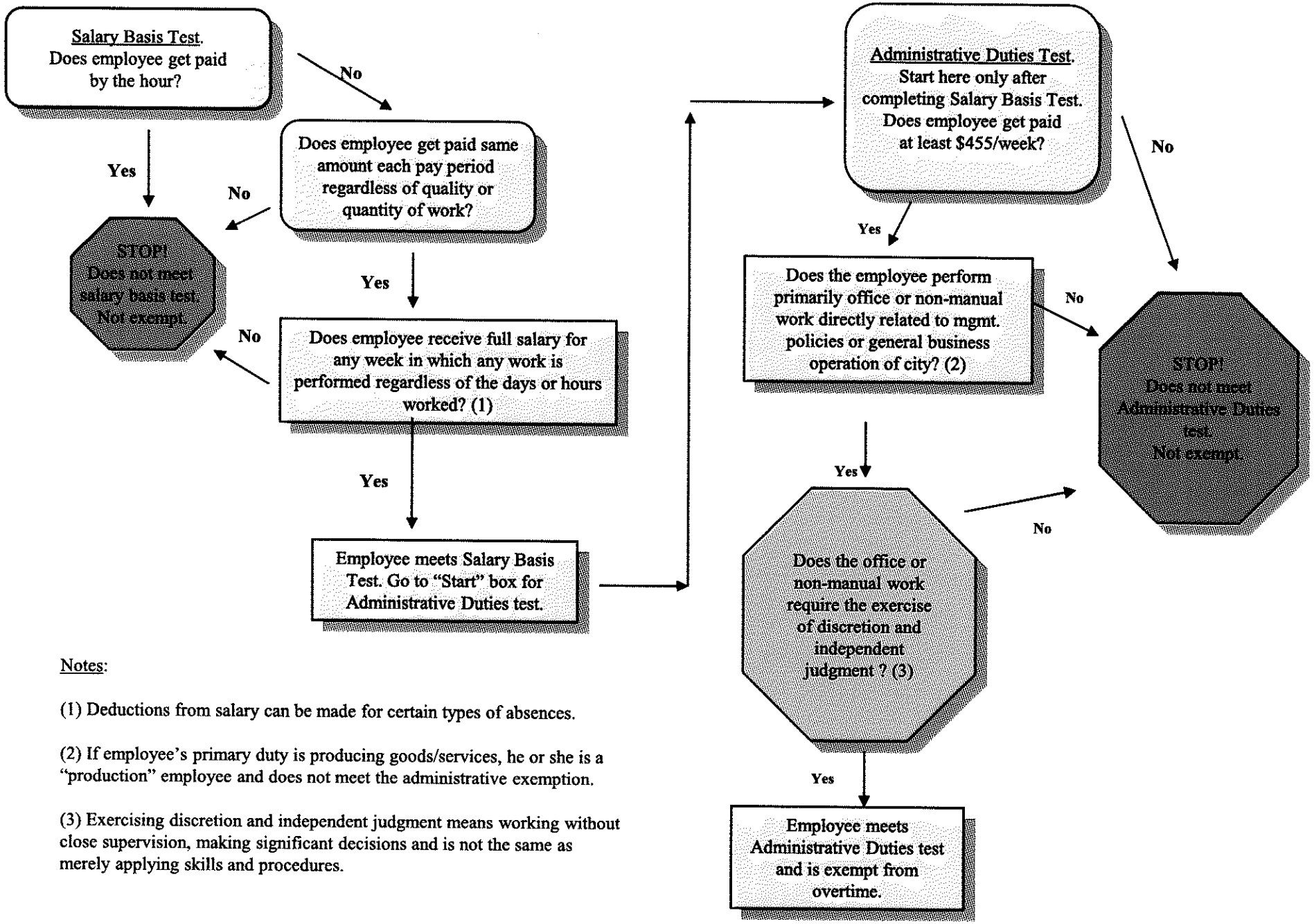
(1) Deductions from salary can be made for certain types of absences.

(2) Supervising 80 hours of work can include supervising any number of part-time employees as long as the total hours of supervised work equals 80 or more on a regular basis.

(3) "Managing" includes interviewing, selecting and training employees; setting hours and directing work; evaluating employee performance; handling employee grievances; disciplining employees; planning work and determining techniques; and providing for employee safety.

(4) "Authority to hire/fire or recommend" can still be met even if City Council has final say provided employee's recommendations are strongly considered and usually followed.

Appendix B: Administrative Exemption under FLSA



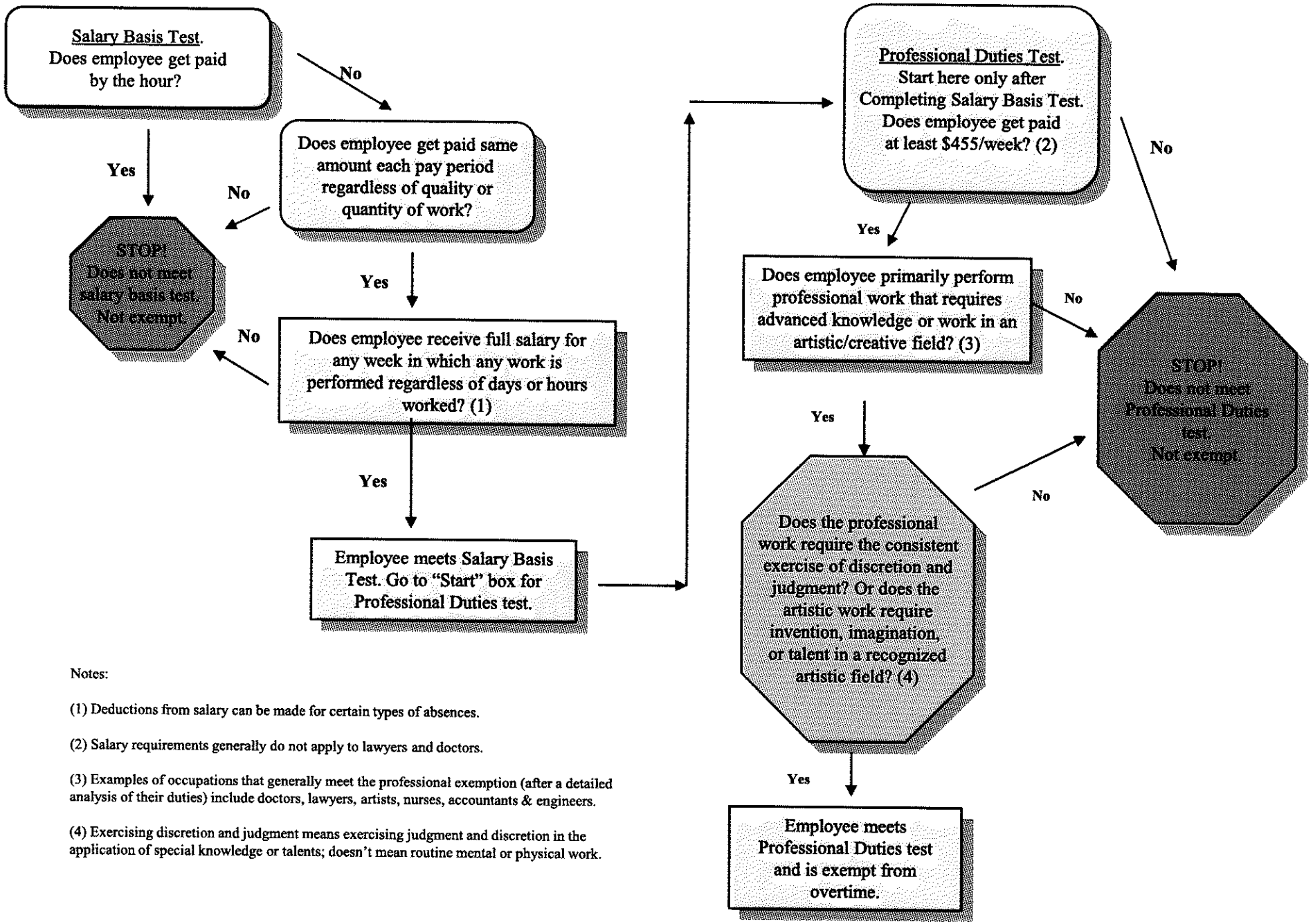
Notes:

(1) Deductions from salary can be made for certain types of absences.

(2) If employee's primary duty is producing goods/services, he or she is a "production" employee and does not meet the administrative exemption.

(3) Exercising discretion and independent judgment means working without close supervision, making significant decisions and is not the same as merely applying skills and procedures.

Appendix C: Professional Exemption under FLSA



Notes:

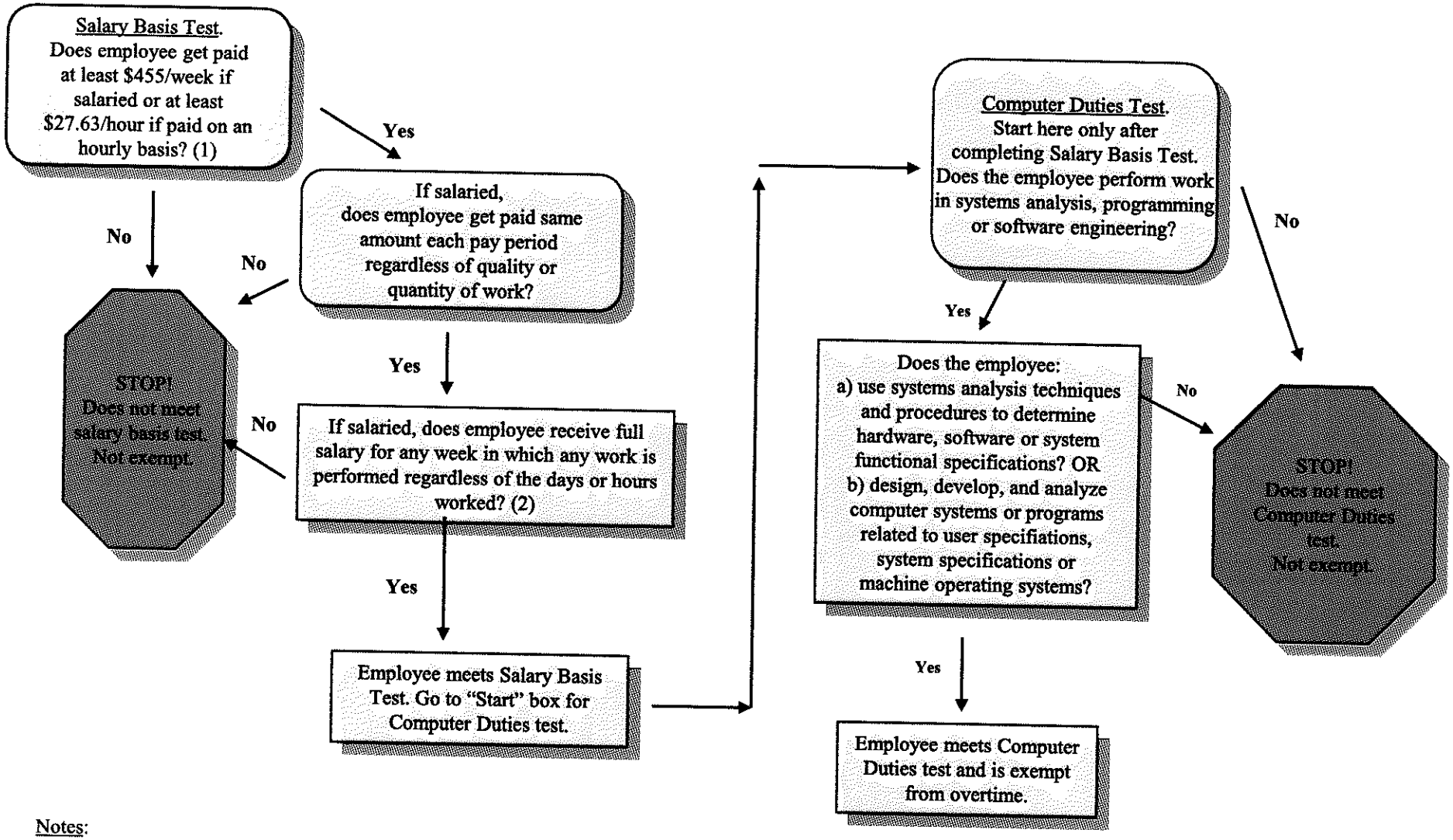
(1) Deductions from salary can be made for certain types of absences.

(2) Salary requirements generally do not apply to lawyers and doctors.

(3) Examples of occupations that generally meet the professional exemption (after a detailed analysis of their duties) include doctors, lawyers, artists, nurses, accountants & engineers.

(4) Exercising discretion and judgment means exercising judgment and discretion in the application of special knowledge or talents; doesn't mean routine mental or physical work.

Appendix D: Computer Exemption under FLSA**



Notes:

(1) Computer employees can be paid on an hourly basis if paid at least $27.63 per hour. Otherwise, they must be paid on a salary basis in the same manner as other employees, including the requirement to pay at least $455/week.

(2) Deductions from salary can be made for certain types of absences.

** While Minnesota law exempts anyone employed in a bona fide executive, administrative, or professional capacity from overtime pay requirements, the state does not exempt computer systems analysts, programmers, software engineers, or other similarly skilled workers from its overtime requirements like Federal law does. For additional information, please refer to "II-D - Computer Exemption" in the attached memo.

MMCI – YEAR TWO
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Interactive Process – Scenario #1

INSTRUCTIONS

1. Pick a group member to play the role of the employee with a disability
2. Read through the facts of the situation below.
3. Engage in an "interactive process" as required by disability law.
    a. Ask questions about how the employee could be accommodated in order to perform the essential functions of the job.
    b. The employee with the disability is allowed to make up any additional facts they wish – i.e. have a little bit of fun with the story.
4. Decide whether the employee could be accommodated or not. If you think you don't have enough information, decide what further information would be needed.

SCENARIO #1: The Case of the Sore CSO

Employee: You are a Community Service Officer (CSO) with the City of Maple Leaf Heights. You were injured on duty about a year and a half ago and you have ongoing back problems. Your doctor has limited you to lifting 20 lbs. and you must get up and move around after about 30 minutes of sitting at a desk or in a car.

Supervisor(s): Your job is to walk through the job duties (below) and decide if the employee could somehow be accommodated in order to perform them safely. Remember, if a job duty is not considered an essential function of the job, it may be a reasonable accommodation to assign it to someone else.

The employee's job description includes:

- delivering council packets every Friday;
- *helping catch and cage animals to be taken to the city's holding center
- Picking up and delivering mail bags from the post office city hall (usually weighing 30 or more lbs), two times per day
- *patrolling city streets for unleashed or wild animals
- *release of property room evidence to rightful owners (some things may weigh in excess of 20 lbs.)

*essential function

MMCI – YEAR TWO
May 2024

Interactive Process – Scenario #2

INSTRUCTIONS

1. Pick a group member to play the role of the employee with a disability
2. Read through the facts of the situation below.
3. Engage in an "interactive process" as required by disability law.
    a. Ask questions about how the employee could be accommodated in order to perform the essential functions of the job.
    b. The employee with the disability is allowed to make up any additional facts they wish – i.e. have a little bit of fun with the story.
4. Decide whether the employee could be accommodated or not. If you think you don't have enough information, decide what further information would be needed.

SCENARIO #2: <u>The Case of the Red-Eyed Receptionist</u>

Employee: You are a Receptionist with the City of Elder Grove Park. You are severely allergic to many fragrances and perfumes which cause you painful headaches and red, itchy eyes. When visitors and other city staff come into the building wearing heavy fragrances, you are miserable for the rest of the day and sometimes have to go home. Your doctor has written a note to the city confirming that you have a serious allergy to fragrances and cannot be around them at all.

Supervisor(s): Your job is to walk through the job duties and decide if the employee could somehow be accommodated in order to perform them safely. Remember, if a job duty is not considered an essential function of the job, it may be a reasonable accommodation to assign it to someone else.

The employee's job description includes:

- *greeting visitors and directing them to the appropriate department
- *answering phones
- *providing back-up clerical support to the utility billing clerk; and
- occasionally running errands for the City Clerk and other department heads

*essential functions

MMCI –YEAR TWO
May 2024

Interactive Process – Scenario #3

INSTRUCTIONS

1. Pick a group member to play the role of the employee with a disability
2. Read through the facts of the situation below.
3. Engage in an "interactive process" as required by disability law.
    a. Ask questions about how the employee could be accommodated in order to perform the essential functions of the job.
    b. The employee with the disability is allowed to make up any additional facts they wish – i.e. have a little bit of fun with the story.
4. Decide whether the employee could be accommodated or not. If you think you don't have enough information, decide what further information would be needed.

SCENARIO #3: <u>The Case of the Police Chief with a Problem</u>

Employee: You are a Police Officer for the City of Lake Grove Park. You suffer from anxiety and sometimes experience panic attacks on the job. You are undergoing treatment and while the panic attacks are less frequent, they are still occurring. When you have a panic attack, you have trouble breathing, your heart starts racing and you experience an "out of body" sensation which lasts about 5-10 minutes. Your psychologist has written a note to the city stating that you cannot work more than 20 hours a week and no night shifts.

Supervisor(s): Your job is to walk through the job duties and decide if the employee could somehow be accommodated in order to perform them safely. Remember, if a job duty is not considered an essential function of the job, it may be a reasonable accommodation to assign it to someone else.

The employee's job description includes:

- *patrolling the city at night looking for possible illegal activity
- *responding to 9-1-1 dispatcher calls such as car accidents, domestic disputes, bar brawls, etc.
- occasionally providing security at community celebrations like the 4th of July parade

*essential function

HR-Related Open Meeting Law Issues

By Laura Kushner

Minnesota's Open Meeting Law (OML) requires that all meetings of city councils are open to the public unless there is a specific exception in the law to close it. This can create some challenging situations, especially for Plan A cities where the city council retains authority over the hiring and discharge of employees.

For example, there is no exception under the OML for job interviews, and in smaller cities the city council itself may do some interviewing. Naturally, the council will want to discuss the strengths and weakness of the job candidates; under the OML, the discussion must be held at an open meeting.

The council could assign a number to each candidate and discuss the candidates referring only to the numbers to keep the discussion a little more confidential. However, this approach will likely be of limited value since the candidate names are public once they are selected to be interviewed.

Another challenging area has to do with whether city councils can close a meeting to discuss the wages of non-union employees. The OML does not clearly allow such discussions to occur in a closed meeting.

However, the council is allowed to go behind closed doors to discuss negotiation strategy related to bargaining with unionized employees. The meeting must be recorded and the tape must be made available, upon request, after all labor contracts are signed.

Fortunately, the OML does have a provision for closing a meeting to discuss employee performance or discipline. The law *requires* the meeting to be closed for discussion of a disciplinary action and allows it for performance evaluation.

However, in both cases, the employee who is to be discussed must be allowed to open the meeting. An employee will not usually choose to open a meeting under these circumstances, but the council must inform the employee of the choice.

A few common questions that come up about disciplinary meetings include:

Does the employee have to be allowed to attend the whole meeting? No. The city council can choose when to call the employee into the meeting and for how long. In theory, the council does not have to bring the employee into the meeting at all. But the council will usually want to hear the employee's side of the story at some point during the meeting.

In the meeting notice, do we have to specifically mention the employee's name? The city does not have to mention the employee's name in the meeting notice. It can state that the meeting is being closed as permitted by *Minnesota Statutes*, section 13D.05, subdivision 2(b) to consider allegations against an individual subject to the council's authority.

Can more than one meeting be held to discuss charges against an employee? Yes, as long as the city council has not made the decision yet whether to take disciplinary action against the employee. Once this decision is made, the council can no longer close future meetings on the topic.

How much do you have to tell the employee about the purpose of the meeting? The law does not specify, but an employee may argue that he or she needs to have enough information to prepare his or her side of the story. Unless there is a specific reason not to tell the employee the purpose of the meeting, it is a good practice to at least provide some basic information such as, "the meeting is about allegations of misuse of city time and equipment."

Laura Kushner is human resources director with the League of Minnesota Cities. Phone: (651) 281-1203. E-mail: lkushner@lmc.org.

Guidance for summarizing results of performance evaluations

Even in Plan B cities, where the city manager deals with most employment issues, the city council will have to evaluate the city manager. This can be done at a closed meeting, but the council will need to summarize the results of the performance evaluation at an open meeting.

Cities vary greatly on how much information they provide as a result of this evaluation, and every council should work with its city attorney to determine how to summarize this information. A 2002 Information Policy Analysis Division decision states the summary should provide enough information for the public to "get the best possible sense of the performance" of the employee. The following is an example of an evaluation summary:

At its meeting of Jan. 7, 2012, the City Council in closed session conducted a performance evaluation of City Administrator Jane Doe. As is required by state statute, at its next meeting, the City Council shall summarize its conclusions. Those conclusions are as follows:

Ms. Doe is well-respected by city staff, business owners, and residents. She does a good job managing her staff and addressing unfunded mandates. She handles the budget well, keeps the Council informed on important issues, and stays focused on priority goals.

In conclusion, the Council encouraged Ms. Doe to keep up the good work.

LEAGUE OF MINNESOTA CITIES

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BOB THE BUILDING INSPECTOR

Bob is a building inspector with your city. He has been with the city for 17 years. Recently, Bob's supervisor came forward to tell you that he wants to terminate Bob because Bob is always late for work, he is rude to residents sometimes, and he just found out that Bob called OSHA to complain about some safety issues that he says the city is not following.

What are some steps you should take? What things should you consider?

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Year 2
2024

THE CASE OF THE PUNCHY PLANNER

The City Planner for your city has been seen by a number of residents at the local municipal liquor store in the middle of a work day having some beers. Also, you have personally observed slurred speech, unsteady walking and blurry eyes on work days. In addition, your Engineering Technician says she's pretty sure she remembers when he used to be an AA member and she thinks he's drinking again. You're thinking about taking it to the City Council and meeting with him first to see what he has to say. The City Planner is a union member. What steps should you consider?