

for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by appropriate certifying entities. However, a teacher's certificate is not generally necessary for post-secondary educational establishments.

(3) Exempt teachers do not include teachers of skilled and semi-skilled trade, craft, and laboring occupations when the paramount knowledge is the knowledge of and the ability to perform the trade, craft, or laboring occupation. Conversely, if the primary requirement of the post-secondary education instructor is the ability to instruct, as opposed to knowledge of and ability to perform a trade, craft, or laboring occupation, then the position may be exempt.

(4) Section 551.203 (Salary-based non-exemption) does not apply to the employees described in this section.

(i) *Medical technologists.* Registered or certified medical technologists who have successfully completed 3 academic years of pre-professional study in an accredited college or university, plus a 4th year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association, generally meet the duties requirements for the learned professional exemption.

(j) *Nurses.* Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption. Licensed practical nurses and other similar health care employees, however, generally do not qualify as exempt learned professionals because possession of a specialized advanced academic degree is not a standard prerequisite for entry into such occupations.

(k) *Dental hygienists.* Dental hygienists who have successfully completed 4 academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association generally meet the duties requirements for the learned professional exemption.

(l) *Physician assistants.* Physician assistants who have successfully completed 4 academic years of pre-professional and professional study, including graduation from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, and who are certified by the National Commission on Certification of Physician Assistants, generally meet the duties requirements for the learned professional exemption.

(m) *Paralegals.* Paralegals and legal assistants generally do not qualify as exempt learned professionals because an advanced, specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general 4-year advanced degrees, most specialized paralegal programs are 2-year associate degree programs from a community college or equivalent institution. However, the learned professional exemption is applicable to paralegals who possess advanced, specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. In addition, a paralegal who fails to meet the professional exemption criteria may be performing exempt administrative work, e.g., overseeing a full range of support services for a large legal office.

#### § 551.209 Creative professionals.

(a) To qualify for the creative professional exemption, an employee's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical, or physical work. The work performed must be "in a recognized field of artistic or creative endeavor," including such fields as music, writing, acting, and the graphic arts. The exemption does not apply to work which can be produced by a person with general manual or intellectual ability and training. The requirement of "invention, imagination, originality, or talent" distinguishes the creative professions from work that primarily depends on intelligence, diligence, and accuracy. The duties of employees vary widely, and exemption as a creative

professional depends on the extent of the invention, imagination, originality, or talent exercised by the employee. Determination of exempt creative professional status must be made on a case-by-case basis. This requirement generally is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; and writers who choose their own subjects and hand in a finished piece of work to their employers. This requirement generally is not met by a person who is employed as a retoucher of photographs, since such work is not properly described as creative in character.

(b) Federal employees engaged in the work of newspapers, magazines, television, or 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, employees who merely rewrite press releases or who write standard recounts of public information by gathering facts on routine community events are not exempt creative professionals. Employees also do not qualify as exempt creative professionals if their work product is subject to substantial control by the organization. However, when the work requires invention, imagination, originality, or talent, as opposed to work which depends primarily on intelligence, diligence, and accuracy, such employees may qualify as exempt creative professionals if their primary duty is performing on the air in radio, television or other electronic media; conducting investigative interviews; analyzing or interpreting public events; writing editorials, opinion columns, or other commentary; or acting as a narrator or commentator. Work that does not fully meet the creative professional exemption criteria does not preclude exemption under another exemption category. For example, public affairs work under control of the organization that does not meet the creative professional exemption may meet the administrative exemption.

#### § 551.210 Computer employees.

(a) Computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field are eligible for exemption as professionals under section 13(a)(1) of the Act and under section 13(a)(17) of the Act. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.

(b) The exemption in section 13(a)(1) of the Act applies to any computer employee whose annual remuneration exceeds the salary-based nonexemption prescribed in § 551.203. The exemption in section 13(a)(17) applies to any computer employee compensated on an hourly basis at a rate of basic pay (as defined in § 551.203(b)) not less than \$27.63 an hour. In addition, these exemptions apply only to computer employees whose primary duties consist of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(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;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

(c) *Computer manufacture and repair.* The exemption for employees in computer occupations does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations as identified in paragraph (b) of this section, are