

# 5 Pro Tips for Making the Overtime Call: Exempt or Non-Exempt

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Compliance **HR**

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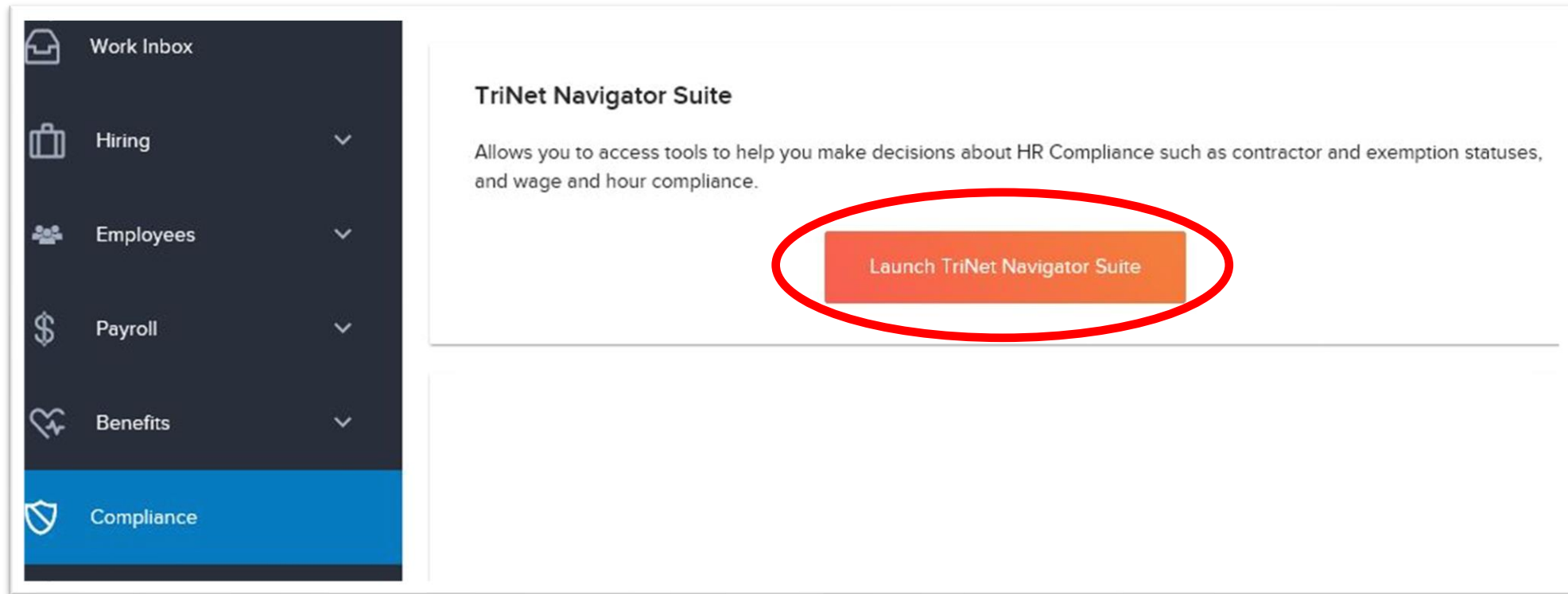
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- Former General Counsel / HR Chief of Global Security Organization
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# Accessing Navigator Suite

Under the Admin View, the TriNet Navigator Suite can be found under the “Compliance” link on the TriNet platform (login.trinet.com) Must have the HR Authorizer role in the TriNet platform to use Navigator Suite.



# Accessing Navigator Suite

## Navigator IC




### Independent Contractor Assessment

Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, and a summary of applicable laws

[+ Create New Evaluation](#) [View Evaluations](#)

[IC Agreement](#)

## Navigator OT




### Exempt Status Assessment

Provides a risk assessment of each applicable exemption, suggestions on how to lower the risk of misclassification, and a summary of the federal and state exemption standards

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## Navigator Pay Practices




### Wage and Hour Compliance

Delivers comprehensive reports on a federal and state-by-state basis for the most common wage and hour issues

[Find Minimum Wage](#) [Use Rapid Reference](#)

## Navigator Onboarding



### Onboarding Document Production

Produces state and federal compliant employment applications, offer letters, and employee non-disclosure documents

[+ Create New Document](#)



# Agenda

- Interview Skills for Determining Exempt v. Non-Exempt
- Tackling the "Duties Test" with Navigator OT
- Understanding the Primary Duties Grid of Navigator OT
- Role Play Clinic

# Answering Your Questions

1. Q & A Box on your screen  
(questions are confidential – visible to presenters only)
2. Or, Ask at Session's End





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- Former Administrator, US-DOL Wage & Hour Division and author of 2004 revisions to the overtime regulations
- Leading authority on federal and state wage and hour laws

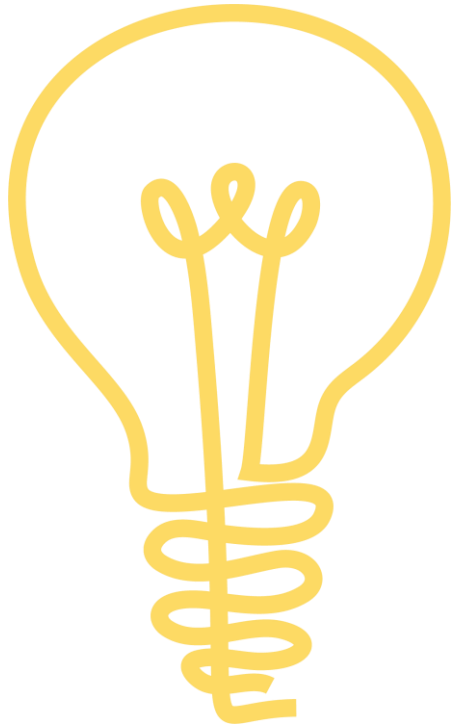
# Interviewing and Fact-Finding for Navigator OT

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# Preparing for the Interview



- Knowing the Navigator OT questionnaire
- Review the job description
- Ensure you are interviewing a person with the most knowledge of the job duties
- Next: *the employee interview*

# Tackling the Job Description – *Fact or Fiction?*



- Is the job description accurate?
- Is job description most recent?
- Are there any significant job duties not included in the job description?
- How many employees in this position?
- Are you the person most knowledgeable about what this position does? If not, have you interviewed the manager most familiar?

# Pro Tip #1 – It's All About the Verbs!!

Reviews	Prepares
Creates	Maintains
Calculates	Manages
Handling	Directing
Oversees	Supports
Leads	Conducts
Determines	Performs
Plans	Coordinates

- Seek more information on verbs (*what's the context?*)
- What do employees do, step-by-step, when “handling” a complaint.
- Be forensic. (*Great: what does that mean?*)

# Pro Tip #2 – Watch For Non-Exempt Verbs!



- Administers
- Schedules
- Coordinates
- Follows
- Handling
- Processing
- Checking
- Entering
- Maintaining
- Inputs
- Supports



Compared to:

- Determining
- Supervising
- Analyzing
- Negotiating
- Directing
- Manages
- Develops
- Creating
- Researching
- Ensuring
- Inspecting

# Pro Tip #3: Don't Stop Digging!

- Manages a budget
- Coordinates office activities
- Oversees vendor contracts
- Leads project teams
- Plan annual marketing calendar
- Maintains inventory

## Breaking down the verb.

When you say “manages”, walk me through, step by step, each task that entails. What is the process for “managing a budget”? Do they oversee a team? Do they create the budget? Do they approve?

If that's difficult,  
“take me through a typical day.”

# Pro Tip #4: Rank the Job Duties



- Which of these job duties are most important?
- How would you allocate the percentage of time spent on each?
- How important is each task to the job and to what degree are their recommendations followed?

# Pro Tip #5 – Last Question

Is there anything else  
about this job that I  
need to know?



# Understanding Navigator OT

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# How did we create the list of job duties?



- Federal and state statutes, regulations and a database of nearly 2,500 cases
- Attorneys read every case to identify the job duties performed by the employees discussed in the case, and whether the court found the employee exempt or non-exempt

# Breaking Down the Duties By Category

Business  
Operations

Management of  
Employees

Sales and  
Customer  
Relations

Representing the  
Company

Computer Systems  
and Other  
Equipment

Other Job Duties

# Tackling the Navigator OT Job Duties Screens

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# The *New* Screens

- Simplified list
- But, additional descriptions available
- Implemented based on comments from you

Let's go live  
in the app!

# Speed Comes with Experience

## Simplified Duty

- Managing client or customer relationships with authority on significant matters

### Learn more

Select this duty for employees who manage client or customer relationships with authority on significant matters. Use this duty for employees with authority to (or who make recommendations on) resolving major issues for significant clients that do not have standard solutions. Do not select this duty for employees who handle routine customer service complaints resolved through established solutions (if the customer complains about X, resolve by offering Y).

#### ***Examples:***

- Making recommendations consistent with the customer's objectives
- Resolving billing disputes with customers
- Negotiating services with customers
- Making decisions on approving or challenging invoices
- Staying in touch with the customers to make sure that they are satisfied, uncover any customer satisfaction issues and resolve those issues

# Speed Comes with Experience

## Simplified Duty

- Handling routine customer service complaints without authority to resolve significant matters

### Learn more

Select this duty for employees who handle routine customer service without authority to resolve significant matters. Select this duty when the complaints reoccur on a regular basis and are resolved through established solutions (if the customer complains about X, resolve by offering Y). Do not select this duty for employees who resolve major issues for significant clients that do not have standard solutions.

#### *Examples:*

- Fielding customer complaints
- Assisting counter people or customers directly with issues
- Answering questions and resolving complaints through a call center using established responses

# Tips for selecting the job duties

Choose the job duties as if you were drafting a job description

The top three to five most important job duties

Job duties that the employee spends most of his or her time performing

*Not every job duty*

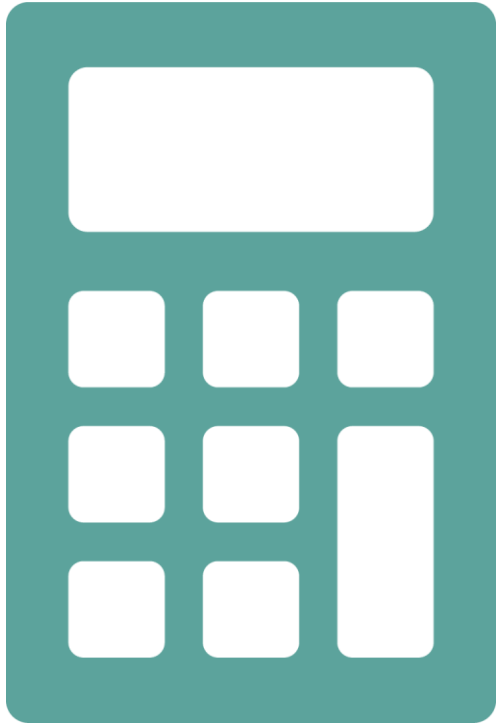
*Not job duties that the employee spends less than 5% or 10% of their time performing*

*Not job duties performed only occasionally*

# Understanding the 3-Prong Primary Duties Grid

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# Determining Primary Duties



- Estimate the percentage of time employees spend performing the job duty each week
- Assess the level of importance of the job duty to the position
- Identify the level of authority the employees have in making decisions or recommendations

# The Grid

## Selected Job Duties

Below is a list of all the duties you selected. If this list is complete, please answer the following questions about each duty. If you need to remove a job duty, you can select "None" from first drop down.

The total time spent should not exceed 100%, even if multiple duties are handled [concurrently](#)®. The total time spent **can** be less than 100%.

You are currently allocating: 90%

Selected Job Duty	Approx Time Spent®	Importance®	Authority®
Following established manuals, guidelines, policies or procedures	40% ▼	Critical ▼	Always Followed ▼
Managing or directing the safety or security of employees or property	40% ▼	Very Important ▼	Almost Always Followed ▼
Solve unique or complex issues that do not have a standard resolution	10% ▼	Very Important ▼	Sometimes Followed ▼

# Percentage of Time %

Now, that you've determined what the position does, how much time does the worker/position spend on each task?

- *Approximate* the percentage of time spent performing the job duty each week
- Choosing “None” or “Less than 5%”
  - ✓ Minimum to no impact on the analysis
  - ✓ Probably choosing too many job duties
- The app provides you with a running total, and warns if you go over 100%
  - ✓ You may have less than 100%
  - ✓ If you do not get over 50% in certain states, the job will come back as non-exempt

# Concurrent Duties

## Challenge:

- Employees may perform more than one job duty at the same time

## Solution:

- Divide total time spent among the duties performed concurrently

## Example

If roughly half of the job is spent handling two duties at the same time, rather than entering 50% for each of those duties, consider entering 25% for each

# Importance !

Assess the level of importance of the job duty to the position

1. Marginally Important
2. Somewhat Important
3. Important
4. Very Important
5. Critical

*Not everything that is time consuming is important to the position.*

- What about the store manager who sweeps the floors and runs the register?
- What about the trucking recruiter who hands out flyers for several hours a week at the unemployment office?

# Authority ✓



How often are the employee's recommendations followed (in regards to the selected job duty)?

1. Always Followed
2. Almost Always Followed
3. Sometimes Followed
4. Rarely Followed
5. Never Followed

# Qualifier Questions ?

- Additional questions are necessary to determine whether other exemption requirements are met, and are populated based on answers to initial questions
  - ✓ Exemptions that may apply – executive, professional, sales, computer
  - ✓ Different state law requirements

## Navigator OT

### Exemption Analysis

Select the choice that best describes the functional area in which Jane Doe works:

Distribution or logistics

Select all of the following statements that apply to the work that Jane Doe performs:  
Check all that apply

☐ Work that regularly and directly assists a business owner or executive

☐ Work that is important to the decision-making process of a business owner or executive

☐ The work is performed under only general supervision, along specialized or technical lines requiring special training, experience or knowledge

☐ The work involves special assignments and tasks under only general supervision

☐ None of the Above

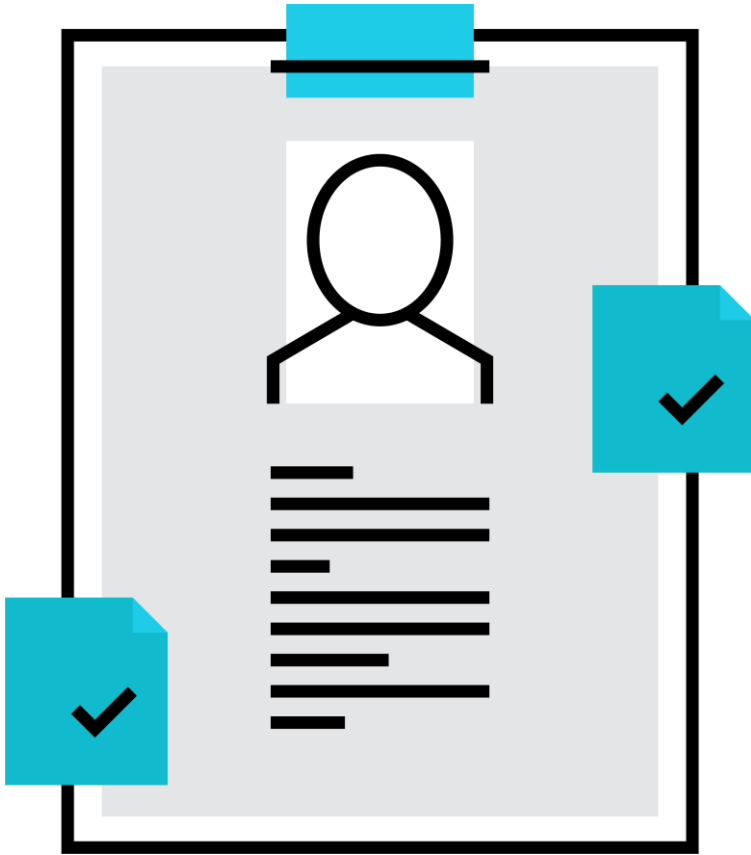
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# Role Play

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# Job Description



- **Console Supervisor**

- Supervising safe, reliable and environmental sound operations of several refinery processing units
- Performing appropriate critical instrument checks and troubleshooting operating problems

# The Interview

## Supervision:

- How many employees do you supervise?
- What does supervising of operations involve?

## Troubleshooting:

- What types of problems do you troubleshoot?
- Do you resolve the problems yourself?



# Translating to NAVIGATOR OT

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# Navigator OT Result

RISK

## Overtime Exempt Risk Report



### POSITION

Console Supervisor  
Operations



### WORK JURISDICTION

Texas

### REGULATIONS

2020

What is the risk of classifying this position as an exempt employee?



Moderately Low

Employees in this position are likely to meet the requirements for the following exemption: Administrative.

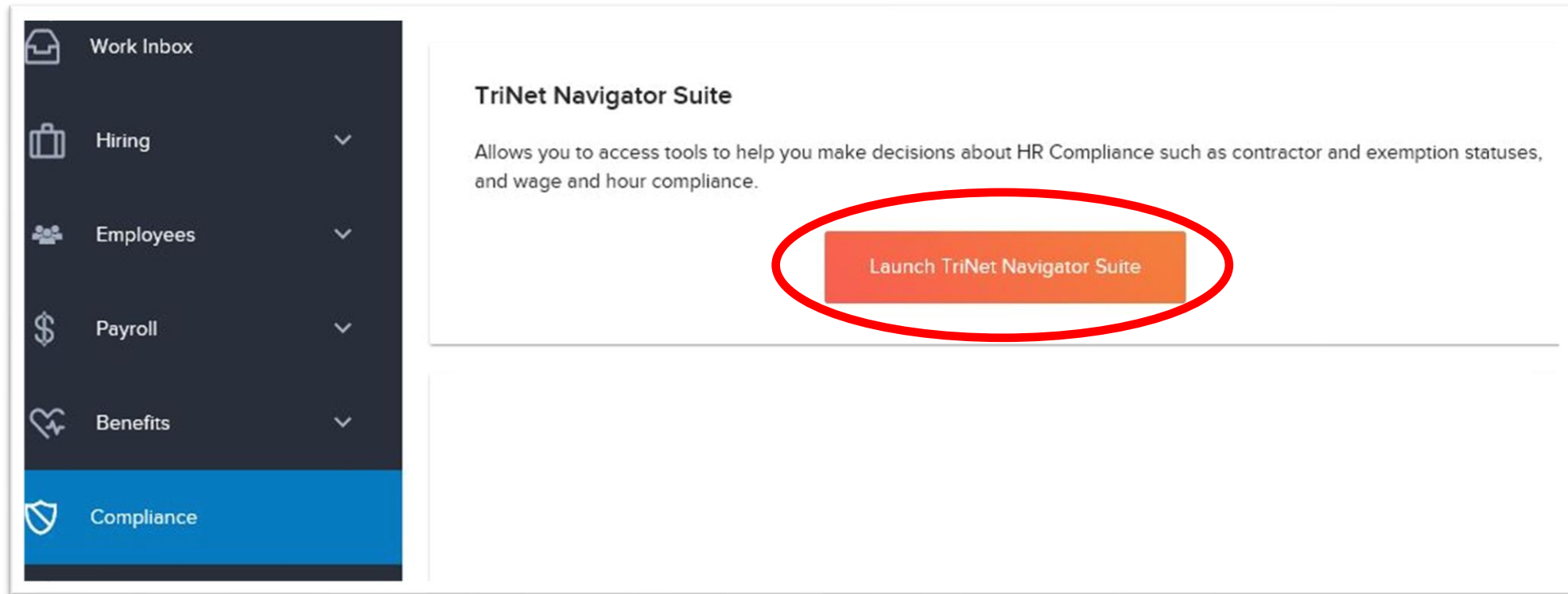
Employees in this position are extremely unlikely to meet the requirements for the following exemption: Learned Professional.

Employees in this position do not qualify for the following exemptions: Computer, Creative Professional, Executive and Outside Sales.

► [View All Individual Exemption Risks](#)

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