

EXECUTIVE EXEMPTION

To qualify for the executive employee exemption, all of the following tests must be met:

1. The employee must be compensated on a salary basis at a rate not less than \$455 per week;
2. The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
3. The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
4. The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

TERMS DEFINED:

Salary Basis- Being paid on a "salary" basis means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked.

Primary Duty- "Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Management- Generally, "management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

Department or Subdivision- The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function (e.g., Benefits Unit of the Human Resources Department).

Customarily and Regularly-The phrase "customarily and regularly" means greater than occasional

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but less than constant; it includes work normally done every workweek, but does not include isolated or one-time tasks.

Two or More- The phrase “two or more other employees” means two full-time employees or their equivalent. For example, one full-time and two half-time employees are equivalent to two full-time employees. The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. For example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each supervisor directs the work of two of those workers.

Particular Weight- Factors to be considered in determining whether an employee’s recommendations as to hiring, firing, advancement, promotion or any other change of status are given “particular weight” include, but are not limited to, whether it is part of the employee’s job duties to make such recommendations, and the frequency with which such recommendations are made, requested, and relied upon. Generally, an executive’s recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include occasional suggestions. An employee’s recommendations may still be deemed to have “particular weight” even if a higher level manager’s recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee’s change in status.

FACTORS TO CONSIDER FOR DETERMINING EXECUTIVE EXEMPTION

1. The relative importance of the exempt duties as compared with other types of duties.
2. The amount of time spent performing exempt work.
3. The employee’s relative freedom from direct supervision.
4. The relationship between the employee’s work and the work done by the subordinates. Is the supervisor a “working supervisor” who performs some of the same work as the subordinate non-exempt (subject) employees?
5. Employees who spend more than 50% of their time performing exempt work generally satisfy the primary duty requirement. Time alone, however, is not the sole test and nothing in the regulations requires the exempt employee to spend more than 50%.
6. The employee with concurrent duties or those employees who perform both exempt and nonexempt duties. Generally, the exempt executives themselves make the decision regarding when to perform non-exempt (subject) duties. In contrast, the nonexempt employee generally is directed by a supervisor to perform the exempt work or performs the exempt work for defined periods of time.

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