

## **Correctly Classify Managers and Assistant Managers**

Restaurant owners, general managers, and human resource employees can use the following guidelines to help them to determine which managers and assistant managers are exempt from the overtime requirements of the Fair Labor Standards Act (FLSA), and which are not.

The FLSA, enforced by the U.S. Department of Labor's Wage and Hour Division (WHD), requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half times the regular rate of pay for all hours worked over 40 hours in a workweek.

Section 13(a)(1) of the FLSA, however, provides an exemption from both minimum wage and overtime pay requirements for employees employed as bona fide executive, administrative, professional and outside sales employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis of not less than \$684 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

Exemptions most applicable to managers and assistant managers in the restaurant industry are the executive and the administrative exemptions.

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

- The employee must be compensated on a salary basis of at least \$684/week;
- The employee's primary (principal, most important) duty must be management of a customarily recognized department or subdivision;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's recommendations must be given particular weight.

A kitchen manager directly overseeing a staff of 25 full-time employees, and earning a salary of \$1500/week would likely be exempt. A beverage manager, supervising no one and earning \$400/week, however, would not be exempt.

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

- The employee must be compensated on a salary basis of at least \$684/week;

- The employee's primary (principal, most important) duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

A comptroller charged with the financial management of a 5-restaurant enterprise, who is able to bind the firm in financial matters and earns \$1200/week would likely be exempt. A restaurant's human resources manager, who supervises no one directly but is responsible for employee benefits, labor relations, government relations, and regulatory compliance, and earns \$900/week, would also likely be exempt. A restaurant's only maintenance employee, earning a salary of \$425/week, would not be exempt even if the employee's title is maintenance manager.

Payment on a salary basis on its own does *not* render the employee exempt from the overtime requirements of the FLSA. Exemption requires that both the salary *and* the duties tests be met.

When state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to state labor departments can be found at [http://www.dol.gov/whd/contacts/state\\_of.htm](http://www.dol.gov/whd/contacts/state_of.htm) .

Exemptions are applied on a case-by-case basis, and factors other than those outlined in this brief summary may impact the determination. This guidance is for general information and is not to be considered in the same light as official statements of position contained in the regulations. For additional information, please visit the Wage and Hour Division's website at <http://www.dol.gov/whd>