

Compliance Reminder: Exempt vs Non-Exempt Employees

You must pay employees overtime after 40 hours unless they meet the criteria for being “exempt”, even if you pay them a salary. There are exemptions for executive and professional employees

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

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- 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 suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight
- The Federal Department of Labor, office of compliance assistance provides a “self test” to help determine if an employee qualifies for the executive exemption:
www.dol.gov/elaws/esa/overtime/e1.htm

Chefs, such as executive chefs and sous chefs, who have attained a four-year specialized academic degree in a culinary arts program, generally meet the duties requirements for the learned professional exemption. The learned professional exemption is not available to cooks who perform predominantly routine mental, manual, mechanical or physical.