

## Duties - Key to Classifying Assistant Managers

The key to the exempt status of assistant managers is the performance of significant managerial duties. To qualify as an executive exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act, a manager does not have to spend the majority of his or her time managing.

### The Executive Exemption

To qualify for the executive exemption, an employee must:

1. have a primary duty that is management of the enterprise in which the employee is employed or for a customarily recognized department or subdivision;
2. customarily and regularly direct the work of two or more other employees;
3. have the authority to hire or fire other employees, or have his or her suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees be given particular weight; and
4. be compensated on a salary basis at a rate of not less than \$455 per week.

U.S. Department of labor regulations define “primary duty” as the “principal, main, major or most important duty that the employee performs,” and explain that “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” (29 C.F.R. §541.700(a)).

Factors to consider in this analysis include:

1. the amount of time spent performing management duties;
2. the employee’s relative freedom from direct supervision.

The proportion of an employee’s time that is spent on managerial duties is not part of the exemption test, meaning that an assistant manager who performs managerial duties concurrently with other nonexempt duties could qualify as an exempt executive (29 C.F.R. §541.106).

An assistant manager whose primary duty includes such activities as scheduling employees, assigning work, overseeing product quality, ordering merchandise, managing inventory, handling customer complaints, authoring payment of bills or performing other management functions may be an exempt executive even though the assistant manager spends the majority of the time on nonexempt work.

An employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager’s absence does not meet this requirement.

### What This Means For Counties

Counties that want to qualify assistant managers for executive exemption will want to research activities that qualify as “managerial duties”. Some examples are listed below:

- interviewing, selecting and training employees;
- setting and adjusting their rates of pay and hours of work;
- maintaining production or sales records for use in supervision or control;
- disciplining employees;
- planning the work;
- determining the techniques to be used;
- planning and controlling the budget.

For more information, contact CTSI at 303-861-0507.