

Exempt vs. Non-Exempt General Guidelines - Hawaii

Federal and state wage and hour laws require employers to pay minimum wages as well as overtime pay to some employees. Employees subject to these laws are called “non-exempt,” whereas employees to whom these provisions do not apply are called “exempt.” Distinguishing between these two classifications of employees is often not a simple job for an employer.

Important to remember:

- ◆ Titles are irrelevant. Simply calling someone a “manager,” does not make him or her an exempt employee.
- ◆ Paying someone a salary does not automatically make the employee exempt - nor does the amount of money you pay matter. Don’t assume that “hourly” means non-exempt and that “salaried” means exempt.
- ◆ An employee must meet both the federal and state exemptions in order to be truly exempt. Be careful since both sets of requirements are sometimes similar and sometimes quite different. This document summarizes how to classify someone as exempt in a manner that will meet both sets of requirements.

Who is exempt?

Under Hawaii law and federal Law, employees may be exempt from overtime pay provisions if they are employed in the following capacities and if their job descriptions meet the definition of the following job categories:

- ◆ executive
- ◆ administrative
- ◆ professional

The employee must:

1. be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week.

AND

2. be "primarily engaged" in duties that meet the definition of exempt work. Details are provided on the next page.

NOTE: In addition to the more typical “white collar” exemptions under federal and state law, there are a number of special case exemptions (including computer professionals and salespersons). Please refer to our HR Info Bulletin entitled “Special Exemptions” for more details.

ANYONE NOT MEETING THE ABOVE REQUIREMENTS IS NON-EXEMPT!

 *If you are still unsure, give us a call. The laws contain specific guidelines for particular jobs, and we can provide you with more detailed information.*

Exempt vs. Non-Exempt

Specific Rules for Classification – Hawaii

In Hawaii, employees may be exempt from overtime pay provisions if they can accurately be classified in one of the three following categories as defined by federal/state law:

An exempt **EXECUTIVE** employee must:

- ◆ be compensated on a salary basis at a rate not less than \$455 per week; **AND**
- ◆ have as his/her primary duty the management of the business or of one of its recognized departments or subdivisions; **AND**
- ◆ customarily and regularly direct the work of at least two or more full-time employees or their equivalent; **AND**
- ◆ have the authority to hire or fire other employees or have particular weight given to his/her suggestions and recommendations regarding the hiring, firing, advancement, promotion, or change of status of other employees; **AND**
- ◆ customarily and regularly exercise discretionary power.

An exempt **ADMINISTRATIVE** employee must:

- ◆ be compensated at a rate not less than \$455 per week (which includes a fixed salary of not less than \$210 per week)
- ◆ have as his/her primary duty the performance of office or non-manual work directly related to management policies or the general business operations of the employer or the employer's customers; **AND**
- ◆ customarily and regularly exercise discretion and independent judgment with respect to matters of significance; **AND**
- ◆ regularly and directly assist a proprietor or an exempt executive or administrator **OR** perform, under only general supervision, work along specialized or technical lines requiring special training, experience or knowledge, **OR** execute special assignments and tasks under only general supervision.

An exempt **PROFESSIONAL** employee must:

- ◆ be compensated at a rate not less than \$455 per week (which includes a fixed salary or fixed fee of not less than \$210 per week)*; **AND**
- ◆ hold a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof or who is the holder of the requisite academic degree for the general practice of medicine and engaged in an internship or residency program for the profession; **OR** have as his/her primary duty the performance of work requiring advanced knowledge in a field of science or learning **OR** requiring invention, imagination, or talent in a recognized field of artistic endeavor; **AND**
- ◆ consistently exercise discretion and independent judgment in the performance of the above duties; **AND**
- ◆ perform work that is predominately intellectual and varied in character.

*The compensation/salary requirement does not apply to bona fide practitioners of law or medicine.

Please refer to our Info Bulletin entitled "Special Exemptions" for detailed information on learned or creative professionals as well as exemptions for computer professionals and salespersons.

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