

The requirements of subpart G (salary requirements) of this part do not apply to the business owners described in this section.

§ 541.102 Sole charge executive.

(a) The term “employee employed in a *bona fide* executive capacity” in section 13(a)(1) of the Act also includes any employee compensated on a salary basis at a rate of not less than \$425 per week (or \$360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities, who is in sole charge of an independent establishment or a physically separated branch establishment.

(b) The term “sole charge” means that the employee ordinarily must be in charge of the company activities at the location where the employee is employed. Thus, to qualify as a “sole charge” executive, the employee must have authority to make decisions regarding the day-to-day operations of the establishment and to direct the work of any other employees at the establishment or branch. Only one person in any establishment can qualify as a sole charge executive, and then only if that person is the top person in charge at that location. The “sole-charge” status of an employee will not be considered lost because of an occasional visit to the establishment or branch office of a superior.

(c) The phrase “independent establishment or a physically separated branch establishment” means an establishment that has a fixed location and is geographically separated from other company property. The management of operations within one of several buildings located on single or adjoining tracts of company property does not qualify for the exemption under this section. In the case of a branch, there must be a true and complete physical separation from the main office.

(d) A leased department may qualify as an independent establishment when the lessee operates under a separate trade name, with its own separate employees and records, and in other respects conducts the lessee’s business independently of the lessor’s. In such a case the leased department would enjoy the same status as a physically separated branch establishment. A leased department cannot be considered an independent establishment when the lessor has authority over such matters as hiring and firing of employees, other personnel policies, advertising, purchasing, pricing, credit operations, insurance and taxes.

§ 541.103 Management of the enterprise.

Generally, “management of the enterprise” includes 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 or sales records for use in supervision or control; appraising employees’ productivity and efficiency; 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 or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; and providing for the safety of the employees or the property.

§ 541.104 Department or subdivision.

(a) 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. A customarily recognized department or subdivision must have a permanent status and a continuing function. For example, a large employer’s human resources department might have subdivisions for labor relations, pensions and other benefits, equal employment opportunity, and personnel management, each of which has a permanent status and function.

(b) When an enterprise has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized subdivision of the enterprise. The employee also may qualify for the sole charge exemption, if all of the requirements of § 541.102 are satisfied.

(c) A recognized department or subdivision need not be physically within the employer’s establishment and may move from place to place. The mere fact that the employee works in more than one location does not invalidate the exemption if other factors show that the employee is actually in charge of a recognized unit with a continuing function in the organization.

(d) Continuity of the same subordinate personnel is not essential to the existence of a recognized unit with a continuing function. An otherwise exempt employee will not lose the exemption merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate

that the employee is in charge of a recognized unit with a continuing function.

§ 541.105 Two or more other employees.

(a) To qualify as an exempt executive under § 541.100, the employee must customarily and regularly direct the work of two or more other employees. The phrase “two or more other employees” means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent.

(b) 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. Thus, for example, a department with five full-time non-exempt workers may have up to two exempt supervisors if each such supervisor customarily and regularly directs the work of two of those workers.

(c) 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.

(d) Hours worked by an employee cannot be credited more than once for different executives. Thus, a shared responsibility for the supervision of the same two employees in the same department does not satisfy this requirement. However, a full-time employee who works four hours for one supervisor and four hours for a different supervisor, for example, can be credited as a half-time employee for both supervisors.

§ 541.106 Working supervisors.

Employees, sometimes called “working foremen” or “working supervisors,” who have some supervisory functions, such as directing the work of other employees, but also perform work unrelated or only remotely related to the supervisory activities are not exempt executives if, instead of having management as their primary duty as required in § 541.100, their primary duty consists of either the same kind of work as that performed by their subordinates; work that, although not performed by their own subordinates, consists of ordinary production or sales work; or routine, recurrent or repetitive tasks.

§ 541.107 Supervisors in retail establishments.

Supervisors in retail establishments often perform work such as serving