

FLSA-325

June 1, 1983

This is in reply to your recent letter concerning whether a chef in a restaurant may be deemed to be an exempt employee under section 13(a)(1) of the Fair Labor Standards Act (FLSA).

In order to qualify for exemption under section 13(a)(1) of the FLSA an employee must meet all the pertinent tests relating to the duties, responsibilities, and salary as contained in the appropriate section of Regulations, 29 CFR Part 541. Of primary importance in making such a determination is the consideration of the salary and the actual duties performed as well as responsibilities of the job.

Cooks, and bakers are not considered to be executive, administrative, and professional employees within the meaning of the regulations regardless of how highly skilled or paid such employees may be. It has been our experience that employees engaged in these and similar trades or crafts in most instances fail to meet the primary duty tests in section 541.1, 541.2, and 541.3 of the regulations. See also sections 541.115 and 541.119(c).

We note from your letter that the chef is not the person in charge of the restaurant the owner exercises such authority and will be on the premises actively managing the restaurant. The chef will personally spend a significant amount of time in food preparation - in excess of 50 percent of his time according to your letter. Thus, we do not believe the chef has management as his primary duty. Under the facts you present, the chef is best characterized as a working supervisor who works along with the other kitchen employees within the meaning of section 541.115 of the regulations.

We wish to direct your attention to an analogous situation involving a bakery department manager. In Dye v. Family Market, Inc., 25 WH 398 (10th Cir. 1982), the Tenth Circuit affirmed that a bakery manager who worked side by side with and performed the same duties as the bakers he supervised was nonexempt even though such manager was paid in excess of \$250 per week, supervised at least two employees, and had other management responsibilities.

Thus, based upon the information you present, it is our opinion that the chef cannot qualify as an exempt executive employee within the meaning of the regulations. Please let us know if you have further questions.

Sincerely,

James L. Valin
Assistant Administrator

William M. Otter
Administrator