



October 15, 2003

FLSA2003-4NA

Dear *Name**,

This is in response to your letter to Tammy D. McCutchen regarding a determination that your employment with *Name** as a training officer does not meet the requirements for exemption as a bona fide "professional" employee within the meaning of 29 CFR Part 541 (copy enclosed).

You state that you are an Occupational Safety and Health Administration (OSHA) training officer with *Name**. Your job entails training new OSHA investigators; giving presentations on OSHA standards to outside groups such as employers, employees and the general public; writing and assembling the division newsletter for the public; answering questions and taking complaints from the public via telephone, letter and electronic mail; reviewing employer responses to nonformal complaints; scheduling *Name** speakers for outside groups; and arranging training opportunities for veteran investigators. You have an undergraduate degree in chemical engineering and a graduate degree in Human Resources Development. Your original position with *Name** was as an industrial hygiene engineer, for which your chemical engineering degree was required. As we understand your description, your engineering degree would not be required for you to perform your current duties as a training officer.

Section 13(a)(1) of the Fair Labor Standards Act (FLSA) provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, professional, or outside sales capacity as those terms are defined in the regulations at 29 CFR Part 541. Job titles or occupational classifications, per se, do not decide the exempt status of any employee; rather, exempt status depends upon the specific duties, responsibilities, and salary of each employee, and whether all of the pertinent tests discussed in the appropriate section of the regulations are satisfied. It is the employer's responsibility, should it decide to assert that a particular exemption applies, to determine whether all the requirements are met for each individual employee for whom the employer claims exemption from the FLSA.

An employee who is paid on a salary or fee basis of at least \$250 per week may qualify for exemption as a bona fide professional employee, if the employee's primary duty consists of the performance of work described in section 541.3(a)(1), which must include work requiring the consistent exercise of discretion and judgment in its performance. Under section 541.3(a)(1), a bona fide professional employee's primary duty must consist of work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, an apprenticeship, and training in the performance of routine mental, manual, or physical processes. See section 541.3 of the enclosed regulations.

As explained in section 541.305 of the regulations, a bona fide professional employee, as defined for purposes of the FLSA under sections 541.3(a)(1) and (e), must primarily perform work which requires the consistent exercise of discretion and judgment in its performance. A prime characteristic of work that qualifies for the professional exemption is the fact that the employee is required to apply his or her specialized advanced knowledge with discretion and judgment, consistently in the day-to-day performance of his or her primary job duties. Often employees who fail to meet all the tests for the professional exemption do so because their primary job duties do not require that they consistently exercise discretion and judgment in applying their advanced knowledge at the level contemplated by the regulations. Employees for whom a substantial portion of their work is mechanical, routine or clerical in nature are not considered exempt as bona fide professional employees under the regulations, regardless of the level of their academic education and training.

It has been our experience that some employers erroneously believe that anyone employed in the field of engineering or similar professional fields will qualify for exemption as a professional employee. While there are many exempt employees in these fields, the exemption of any individual depends



upon the individual's duties and other qualifications required for the job actually performed, not simply the level of education acquired by the employee without regard to what the primary job duties require.

As discussed in section 541.308 of the regulations, the statutory exemption for employees employed "in a bona fide ... professional capacity" does not exempt all employees of professional employers, or all employees in particular industries having large numbers of professional members, or all employees in any particular occupation. Further, it does not exempt persons with professional training, who are working in professional fields, but who perform a substantial amount of work at levels below the level that typifies their advanced academic training, or work that is routine. For example, the field of engineering includes many persons with "engineer" titles, who are not professional engineers, as well as many who are trained in the engineering profession, but whose actual job duties in their day-to-day work do not require that they possess a specialized, advanced engineering degree as a standard prerequisite for entrance into their field.

The professional employee exemption, as defined for purposes of the FLSA, is limited to those professions which have a recognized status based on the requirement that individuals must acquire professional-level knowledge through prolonged study in a field of science or learning to enter their particular profession, and typically include individuals who possess the appropriate advanced academic degree that is recognized for their particular profession. The professions of law, medicine, nursing, and theology have been traditionally recognized as "professional" within the meaning of section 541.3, since such professions required a prolonged course of specialized intellectual instruction as a standard (if not universal) prerequisite for entry into these fields. (See section 541.301.) Further examples of professions meeting the requirement of a prolonged course of specialized intellectual instruction and study are cited in section 541.301 (e)(1).

It is our view that the training officer position you described would not be considered among the recognized professions for purposes of the professional employee exemption under the FLSA, as it does not require a specialized, advanced academic degree for entrance into the field. Although you have an undergraduate degree in chemical engineering and a master of arts degree in Human Resources Development, the duties and responsibilities described by you lead us to conclude that your current job does not require the "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study . . ." within the contemplation of section 541.301 of the regulations. Thus, we are unable to conclude that your employment as OSHA training officer meets all the requirements of the professional employee exemption as defined by 29 CFR Part 541.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a different conclusion than the one expressed herein.

Sincerely,

Barbara R. Relerford
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*