



June 1, 2006

FLSA2006-10NA

Dear *Name**,

This is in response to your inquiry on behalf of your constituent, *Name**, regarding the Fair Labor Standards Act (FLSA) exemption from minimum wage and overtime for certain salaried executive, administrative, and professional employees. *Name** would like to know if an employee may qualify for the exemption if employed as a part-time employee making less than \$455 a week.

*Name** describes her position as a full-time salaried employee who would like to cut back her hours worked to a "half-time position." She would like to remain a salaried employee. She asks several questions regarding daily and weekly limits on hours worked.

Generally, the FLSA requires that employees be paid at least \$5.15 per hour and time and a half their regular rate of pay for all hours worked over 40 in one workweek. FLSA section 13(a)(1) (copy enclosed) provides an exemption from the minimum wage and overtime provisions for "any employee employed in a bona fide executive, administrative, or professional capacity," as those terms are defined in 29 C.F.R. Part 541 (copy enclosed). These regulations were revised effective August 23, 2004 (69 Fed. Reg. 22,122 (Apr. 23, 2004)). To qualify for exemption, an employee must be paid at least \$455 per week on a salary basis and meet the duties tests requirements. No employer is required to pay any employee on a salary basis or at the level specified in the Part 541 regulations under the FLSA unless the employer is claiming this exemption applies to a particular employee. If an employee does not meet all the requirements for the particular Part 541 exemption, the non-exempt employee may be paid a salary, which is used to determine the employee's regular rate of pay, if paid at least one and a half times the regular rate of pay for all hours worked over 40 in a workweek. FLSA § 7(a); see also 29 C.F.R. § 778.113 and Field Operations Handbook § 32b04(a) (copies enclosed).

*Name** asks the following questions:

Can an employee hold a half-time, 20 hour per week position (earning less than \$455 per week) and be considered a salaried worker under Department of Labor regulations?

An employee earning less than \$455 per week generally does not qualify for the exemption in FLSA section 13(a)(1). However, a non-exempt employee may be paid a salary to work 20 hours per week without violating the provisions of the FLSA if the amount of the salary paid when divided by the actual number of hours worked equals the equivalent of at least \$5.15 per hour. Whether an employee is paid on an hourly or salary basis is a decision left to the employer provided that the minimum wage and overtime requirements of the FLSA are met.

Is there a daily limit on the number of hours an hourly employee can work, so long as he/she stays within the 80 hour per two-week pay period limit?

The FLSA provides that overtime must be paid to non-exempt employees for all hours worked over 40 hours per workweek and does not permit averaging of hours over two or more weeks. 29 C.F.R. § 778.104 (copy enclosed). See also Fact Sheet #23 (copy enclosed). The FLSA does not contain a daily limit on the number of hours an employee 16 years of age or older may work.

Is there a weekly limit to the number of hours an hourly employee can work, so long as he/she stays within the 80 hour per two-week pay period limit?



There is no weekly limit on the number of hours an employee 16 years of age or older may work, so long as the employee is paid at least time and a half for all hours worked over 40 in the workweek.

Is there a daily limit to the number of hours a salaried employee can work, so long as he/she stays within the 80 hours per two-week pay period limit?

There is no limit on the number of hours a salaried *exempt* employee 16 years of age or older, who meets the requirements of 29 C.F.R. Part 541, may work per day or per week. A salaried *non-exempt* employee is subject to the same 40 hours per week overtime standard as employees paid on an hourly basis. The FLSA does not set daily limits on the number of hours an employee 16 years of age or older may be requested to work, but some state laws do set such daily limits.

Is there a weekly limit to the number of hours a salaried employee can work, so long as he/she stays within the 80 hour per two-week pay period limit?

Please see answers to previous questions.

This response is based exclusively on the facts and circumstances described in your constituent's request and is given based on her representation, express or implied, that she has provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in her letter might require a conclusion different from the one expressed herein.

We trust that the above information is responsive to your inquiry.

Sincerely,

Barbara Relerford
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures:
FLSA §§ 7(a) and 13(a)(1)
29 C.F.R. Part 541
29 C.F.R. § 778.104 and § 778.114
Field Operations Handbook § 32b04(a)
Fact Sheet #23

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