



FLSA2006-24NA

November 3, 2006

Dear **Name***:

This is in response to your request for an opinion regarding whether deductions for bad checks or other cash shortages from bonus payments made to salaried exempt employees are permissible and whether the deductions would affect their exempt status under section 13(a)(1) of the Fair Labor Standards Act (FLSA). As described in more detail below, it is our opinion that the deductions from bona fide bonus payments are permissible and do not affect the employees' exempt status.

Section 13(a)(1) of the FLSA¹ provides a complete minimum wage and overtime pay exemption 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. An employee may qualify for exemption if all of the pertinent tests relating to duties and salary are met.

You state that your client employs managers who are exempt as executives under section 13(a)(1) of the FLSA. Your letter does not include any information about the duties of the employees other than to describe them as "managers who are exempt as executives." Without additional information, it is not possible for us to confirm whether these employees would meet the duties requirements for the executive exemption under 29 C.F.R. §§ 541.100-.106. The exemption depends not on occupational titles or job classifications, but rather on whether the individual employee's duties and salary meet the requirements of the regulations. *See* 29 C.F.R. § 541.2. Our analysis, therefore, is limited to addressing the compensation arrangements you describe.

The managers receive a salary in excess of \$455 each week. They may also receive certain bonuses pursuant to a written bonus program. Your client determines whether the employee is eligible for the bonus. The bonus amount is determined by a preexisting formula, based upon achieving budgeted profits and the actual percentage of profits at the manager's store. The bonus program also provides that a bonus may be reduced by the amount of bad checks or other cash shortages attributable to an individual manager. These cash shortages are never deducted from the manager's weekly salary.

As stated in 29 C.F.R. § 541.600(a), an employee will be considered to satisfy the salary requirement if the employee is paid on a salary basis at a rate of not less than \$455 per week. The salary basis test is met if the employee regularly receives each pay period

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in [29 C.F.R. § 541.602(b)], an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.

29 C.F.R. § 541.602(a).

As indicated in 29 C.F.R. § 541.604(a),

[a]n employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least \$455 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least \$455 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least \$455 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (*e.g.*, flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.

In other words, any compensation paid in addition to the guaranteed salary is not inconsistent with the salary basis of payment. *See* Wage and Hour Opinion Letter April 1, 1999 (payment of additional compensation to exempt salaried employees does not defeat the exemption) (copy enclosed).

Section 541.600(a) requires only that exempt employees be paid a guaranteed salary of at least \$455 per week. Additional compensation above this salary amount is generally something that may be agreed upon between the employer and the employee. The prohibition against improper deductions from the guaranteed salary under 29 C.F.R. § 541.602(b) does not extend to such additional compensation provided to exempt employees. Therefore, it is our opinion that bad check and other cash shortage deductions from bonus payments paid to salaried exempt employees are permissible and do not affect the employees' exempt status under section 13(a)(1) of the FLSA so long as the bonus payments are bona fide and are not paid to facilitate otherwise prohibited deductions from the guaranteed salary. *See* Wage and Hour Opinion Letter [FLSA2006-24](#) (July 6, 2006); Wage and Hour Opinion Letter October 9, 1991 (copy enclosed).

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have 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 your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that the above is responsive to your inquiry.

Sincerely,

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

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