



September 23, 2005

FLSA2005-34

Dear *Name**,

This is in response to your letter questioning the application of the Fair Labor Standards Act (FLSA) to salary deductions for work of less than eight hours a day for a university professor. As we explain below, under the FLSA, a university professor who fits the exemption related to teachers is not subject to the salary requirements applicable to other professionals.

Section 13(a)(1) of the FLSA 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. The Department last year revised the regulations in 29 C.F.R. Part 541 (copy enclosed) and published its final rule in the Federal Register on April 23, 2004 (69 FR 22122). The effective date of this final rule was August 23, 2004. Pursuant to section 541.600(a), generally an exempt professional employee must be compensated on a salary basis at a rate of not less than \$455 per week. Section 541.602 defines the requirement for payment on a "salary basis." However, the compensation requirements of a minimum salary level and payment on a salary basis do not apply to employees engaged as teachers. See 29 C.F.R. § 541.303(d). See also § 541.600(e).

The term "teacher" as defined in 29 C.F.R. § 541.303(a) means "any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed." Section 541.204(b) defines an educational establishment as including an institution of higher education.

Therefore, it is our opinion that university professors who qualify as teachers under the regulations may be paid any amount and on any basis and such compensation may be subject to deductions because the employee worked less than a full day. This conclusion is consistent with our opinions issued under the old regulations, which similarly provided that the compensation requirements did not apply to teachers. See Opinion Letters dated October 20, 1997, September 25, 2000, and February 14, 2001 (copies enclosed).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of 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 request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a 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. This opinion letter is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. See 29 C.F.R. §§ 790.17(d), 790.19; *Hultgren v. County of Lancaster, Nebraska*, 913 F.2d 498, 507 (8th Cir. 1990).



We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosures: 29 C.F.R. Part 541
WH Opinion Letters October 20, 1997;
September 25, 2000;
February 14, 2001

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