



FLSA2006-46

December 21, 2006

Dear **Name***:

This is in response to your request for an opinion regarding whether Location Managers employed in the motion picture industry are exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) as administrative employees. It is our opinion that the Location Managers qualify for the administrative exemption.

A Location Manager typically chooses a location for filming with approval from the director and production management, negotiates the site's rental, contracts for all necessary utilities, applies for all necessary governmental services and permits, creates and enforces rules specific to the filming locations based on that site's specific circumstances and designed to comply with state and local law, acts as a liaison between the production company and local property owners and residents, and secures final rental payment for the property owner including negotiating any claim of property damage. Location Managers receive weekly compensation ranging from \$900 to \$2,300 that does not vary in light of specific days the Location Manager or the rest of the company actually works.

FLSA section 13(a)(1)¹ 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 541.² An employee may qualify for exemption if all of the pertinent tests relating to duties and salary are met.

Employees in the motion picture producing industry whose compensation is at a base rate of at least \$695 per week are not subject to the "salary basis" rules of 29 C.F.R. § 541.602 "if paid a proportionate amount (based on a week of not more than 6 days) for any week in which the employee does not work a full workweek for any reason." 29 C.F.R. § 541.709.

The term "employee employed in a bona fide administrative capacity" means

any employee . . . [w]hose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and . . . [w]hose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

29 C.F.R. § 541.200.

To qualify for the administrative exemption, an employee's primary duty must be "directly related to management or general business operations." This "refers to the type of work

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.

² These regulations were revised effective August 23, 2004. See 69 Fed. Reg. 22,122 (Apr. 23, 2004).

performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.” 29 C.F.R. § 541.201(a). Work that is “directly related to management or general business operations” includes:

work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities.

29 C.F.R. § 541.201(b). Furthermore,

[t]o qualify for the administrative exemption, an employee’s primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term “matters of significance” refers to the level of importance or consequence of the work performed.

29 C.F.R. § 541.202(a).

Determining whether an employee exercises discretion and independent judgment requires evaluating the following factors:

whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee’s assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

29 C.F.R. § 541.202(b).

Before the 2004 revisions to the Part 541 regulations, Location Managers of motion picture companies were specifically cited as a type of qualifying administrative employee who

performed special assignments away from the employer's place of business. *See* 29 C.F.R. § 541.201(a)(3) (2003).

The Location Managers receive between \$900 and \$2,300 per week without variance based on the specific days the Location Manager works, thereby satisfying the § 541.709 salary requirements for employees in the motion picture producing industry. Based upon their duties—such as selecting locations, entering into rental agreements, and developing and implementing rules for employees to follow on location—it appears that the Location Managers are primarily engaged in the budgeting, procurement, and personnel management functions described in § 541.201 as types of work directly related to assisting with the running or servicing of the employer's business.

The Location Managers' primary duties include the exercise of discretion and independent judgment. For example, the Location Manager formulates management policies when creating and enforcing regulations for the production crew based upon the site's requirements. Also, the Location Manager commits the employer in financial matters and negotiates and binds the company regarding significant matters when the Location Manager chooses the location, negotiates the site's rental, obtains contracts with local private resources, obtains necessary permits from local government, and represents the company's position to the property owner. Finally, the Location Manager represents the company when acting as a liaison between the company and the property owner and any disgruntled local residents, and when resolving the final balance of account between the company and property owner, including whether the company owes for any damages done to the rental property. We have previously concluded that such activities involve the requisite exercise of discretion and independent judgment. *See, e.g.,* Wage and Hour Opinion Letter [FLSA2006-34](#) (Sept. 21, 2006) (sufficient discretion and independent judgment where employee has authority to bind employer in significant matters such as negotiating contracts).

Accordingly, the position of Location Manager, as described above, satisfies the requirements for the administrative exemption from minimum wage and overtime requirements of the FLSA.

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,

Paul DeCamp
Administrator

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