



October 11, 2005

FLSA2005-37

Dear *Name**,

This is in response to your letter inquiring as to whether the Bookkeeper/Office Manager, Maintenance Supervisor, and an individual you label "Maintenance Personnel" of a "Rural Water District" are exempt from the Fair Labor Standards Act (FLSA) overtime requirements. In the event that any of these employees are not exempt, you ask for confirmation on how to document hours worked and calculate overtime.

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)).

Under 29 C.F.R. § 541.100, the term "employee employed in a bona fide executive capacity" is defined as "any employee":

- (1) Compensated on a salary basis at a rate of not less than \$455 per week...;
- (2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;
- (3) Who customarily and regularly directs the work of two or more other employees; and
- (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

Id.

Under 29 C.F.R. § 541.200, the term "employee employed in a bona fide administrative capacity" means "any employee":

- (1) Compensated on a salary or fee basis at a rate of not less than \$455 per week...;
- (2) Whose 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
- (3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Id.

Under 29 C.F.R. § 541.300, the term "employee employed in a bona fide professional capacity" is defined as "any employee":

- (1) Compensated on a salary or fee basis at a rate of not less than \$455 per week...;
- (2) Whose primary duty is the performance of work: (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Id.

Our analysis of the applicability of these exemptions to each of the three employees follows.

- **Bookkeeper/Office Manager**



In follow-up correspondence with the Wage and Hour Division, you indicated that the Bookkeeper is paid less than \$455 per week; therefore, the Bookkeeper is ineligible for any of the section 13(a)(1) exemptions because the Bookkeeper does not satisfy the salary requirements for these exemptions. The Bookkeeper is covered by the minimum wage and overtime protections of the FLSA.

- **Maintenance Supervisor**

- A. Executive Exemption: The Maintenance Supervisor is the supervisor for the District's Maintenance Personnel. However, your letter indicates that there is only one Maintenance Personnel. As set forth above, the executive exemption requires that the employee supervise the equivalent of two other full-time employees. This minimum threshold is not met. Additionally, the Maintenance Supervisor must be able to hire and fire employees or have his suggestions given particular weight to qualify for the executive exemption. The job description you provided does not confirm that this requirement is met.
- B. Administrative Exemption: The Maintenance Supervisor also does not qualify for this exemption because it requires that the primary duty be office or non-manual work directly related to the management or general business operations of the employer. Maintaining the District's equipment, such as by performing preventative maintenance on pumping, electrical, and mechanical systems, is manual labor.
- C. Professional Exemption: The Maintenance Supervisor does not qualify for the professional exemption because the primary duty does not require advanced knowledge customarily acquired through a prolonged course of specialized intellectual instruction in a field of science or learning or invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Thus, based upon the information provided, the Maintenance Supervisor does not meet the duties requirements for these exemptions and is protected by the minimum wage and overtime provisions of the FLSA.

- **Maintenance Personnel**

- A. Executive Exemption: The Maintenance Personnel has no supervisory duties and thus does not qualify for the executive exemption.
- B. Administrative Exemption: The maintenance of equipment is manual and not office work, thus disqualifying the Maintenance Personnel from the administrative exemption.
- C. Professional Exemption: The Maintenance Personnel does not qualify for the professional exemption for the same reasons stated above for the Maintenance Supervisor.

As with the Maintenance Supervisor, based upon the information provided, the Maintenance Personnel also does not meet the duties requirements for these exemptions. In summary, since the Bookkeeper/Office Manager, the Maintenance Personnel and Supervisor are not exempt, they must be paid at least the minimum wage and time and one-half their regular rates of pay for the hours worked over 40 in a workweek.¹

¹ In addition to the section 13(a)(1) exemption, FLSA section 13(b)(12) (copy enclosed) provides an exemption from the overtime provisions for "any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year." This section exempts employees of irrigation systems that are used



Recordkeeping

Guidance concerning keeping records of hours worked, the determination of hours worked, and the calculation of overtime for non-exempt employees is provided in Fact Sheets 21-23 (copies enclosed). If you have questions after reviewing those materials, please contact the local Wage and Hour district office at TCBY Building, Suite 725, 425 West Capitol Avenue, Little Rock, Arkansas, or by telephone at (501) 324-5292.

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. This opinion 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*, 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

Enclosure: FLSA §§ 13(a)(1) and 13(b)(12)
29 C.F.R. Part 541
29 C.F.R. §§ 780.400-.409
Fact Sheets 21, 22, 23

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

almost exclusively for agriculture. An irrigation system is not disqualified if some of the water going to the farmers is used for domestic purposes, but the amount used for domestic purposes must be minimal. See 29 C.F.R. § 780.408 (copy enclosed). Additionally, the system must be non-profit or operated on a sharecrop basis. You have indicated in correspondence with the Wage and Hour Division that approximately 80% of the District's customers are residential customers. Therefore, the irrigation system exemption provided by section 13(b)(12) of the FLSA does not apply to the Rural Water District.