



January 7, 2005

FLSA2005-9

Dear *Name**,

This is in response to your letter to Secretary Chao concerning the application of the professional exemption under Section 13(a)(1) of the Fair Labor Standards Act (FLSA) to paralegals. Please note that the Department of Labor issued revisions to 29 CFR Part 541, effective August 23, 2004 (copy enclosed). The updated Part 541 regulations apply prospectively, beginning on August 23, 2004. Our response is applicable under the updated version of the regulations that clarify and make no substantive changes in the primary duty test requirements for the professional exemption.

You state that your employer has recently reclassified your position as a paralegal to a nonexempt status. You possess a four-year degree from an accredited university, a paralegal certificate, and have taken continuing legal education courses in your twenty-two years of service as a paralegal. You also indicate that you satisfy the salary basis requirements under the revised regulations.

With respect to the professional exemption, as discussed in 29 CFR 541.300 of the regulations, the term "employee employed in a bona fide professional capacity" in Section 13(a)(1) of the FLSA shall mean any employee: (1) compensated on a salary or fee basis at a rate of at least \$455 per week; (2) whose primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

The primary duty test under the learned professional exemption at § 541.301 includes three elements: (1) the employee must perform work requiring advanced knowledge; (2) the advanced knowledge must be in a field of science or learning; and (3) the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. The phrase "work requiring advanced knowledge" means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. The phrase "customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree.

As the regulation provides in § 541.301(e)(7), "[p]aralegals and legal assistants generally do not qualify as exempt learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general four-year advanced degrees, most specialized paralegal programs are two-year associate degree programs from a community college or equivalent institution. However, the learned professional exemption is available for paralegals who possess advanced specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. For example, if a law firm hires an engineer as a paralegal to provide expert advice on product liability cases or to assist on patent matters, that engineer would qualify for exemption." Therefore, unless you possess an advanced specialized degree in another professional field, that degree is a standard prerequisite for entry into that field, and you apply advanced knowledge in that field in the performance of your paralegal duties, your position as a paralegal cannot qualify for the professional exemption under the updated regulations implementing Section 13(a)(1) that became effective on August 23, 2004. Hence, your position as a paralegal is covered by the overtime and minimum wage provisions of the FLSA.

As the preamble to the final rule noted at 69 FR 22154-55, the Department received numerous comments during the notice and comment period urging the Department to declare that paralegals are exempt learned professionals. However, "none of these commenters provided any information to demonstrate that the educational requirement for paralegals is greater than a two-year associate degree from a community college or equivalent institution." *Id.* at 22154. Furthermore, there was "no evidence in the record that a four-year specialized paralegal degree is a standard prerequisite for entry into the



occupation.” The final rule, thus, reaffirms the longstanding position of the Department that paralegals and legal assistants do not qualify for the learned professional exemption.

We trust that this information is responsive to your inquiry. If you require further assistance, please feel free to visit our FairPay website at www.wagehour.dol.gov or contact our local district office located at 1321 Murfreesboro Road, Suite 511, Nashville, TN 37217, tel. (615) 781-5344, fax. (615) 781-5347.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

Enclosure

*Note: * The actual name(s) was removed to preserve privacy.*