



July 6, 2006

FLSA2006-24

Dear **Name***,

This is in response to your request for an opinion concerning whether cash shortage deductions from commission payments made to salaried exempt employees would affect their exempt status under section 13(a)(1) of the Fair Labor Standards Act (FLSA). For the reasons explained below, we conclude that cash shortage deductions from commission payments made to salaried exempt employees would not affect such employees' exempt status under section 13(a)(1) of the FLSA.

Section 13(a)(1) of the FLSA, 29 U.S.C. § 213(a)(1) (copy enclosed), 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 duty, salary level, and salary basis are met. Please note that revisions to 29 C.F.R. Part 541 were published as a final rule on April 23, 2004 (69 Fed. Reg. 22,122) and became effective on August 23, 2004 (copy enclosed). Our response is applicable under the final rule.

For discussion purposes, we assume that the affected employees meet both the duty and the guaranteed salary level tests required under the final rule. As stated under 29 C.F.R. § 541.600(a) (copy enclosed), an employee will be considered to satisfy the salary level if the employee is paid on a salary basis at a rate of not less than \$455.00 per week. The salary basis test is met if the employee regularly receives each pay period "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) (copy enclosed)], 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) (copy enclosed).

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

[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, additional compensation paid on any basis besides the guaranteed salary is not inconsistent with the salary basis of payment. See Field Operations Handbook § 22b01 and Wage and Hour Opinion Letter April 1, 1999 (copies enclosed).

The final rule at 29 C.F.R. § 541.600(a) requires only that exempt employees be paid a guaranteed salary of at least \$455 per week, and any 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 any such additional compensation provided to exempt employees. Therefore, it is our opinion that cash



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shortage deductions may be made from a salaried exempt employee's commission payments without affecting the employee's exempt status under section 13(a)(1) of the FLSA so long as the commission payments are bona fide and are not paid to facilitate otherwise prohibited deductions from the guaranteed salary.

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 issues 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 this letter is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

Enclosures:

FLSA section 13(a)(1)
29 C.F.R. Part 541
Field Operations Handbook § 22b01
Wage and Hour Opinion Letter April 1, 1999

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