



FLSA2006-41

October 26, 2006

Dear **Name***:

This is in response to your request for an opinion regarding whether instructors at a career school qualify as exempt teachers under Fair Labor Standards Act (FLSA) section 13(a)(1).¹ It is our opinion that the instructors qualify for the teacher exemption.

Your client is a career school providing technical instruction and professional development to students seeking careers as automotive, diesel, collision repair, motorcycle, and marine technicians. The school requires its instructors to have a high school degree or its equivalent and at least five years experience in a related field. The instructors must also be certified by the Automotive Service Excellence/Industry Conference on Auto Collision Repair (ASE/ICAR) or be able to obtain certification within one year. The instructors must also fulfill any applicable state qualifications for teaching at a vocational, for-profit school. Typically, the experience required for state qualification fulfills the minimum standards for the national accrediting agency, the Accrediting Commission of Career Colleges and Technology (ACCSCT). The instructors are required to attend an internal six-week instructor training program. The instructors do not write the materials to be taught, but are responsible for determining the organization, communication and delivery of the materials, and developing learning activities and demonstrations. The instructors are responsible for the continual assessment of student progress through testing and evaluations. Finally, the instructors do not prepare the student exams but are responsible for grading and evaluating the students and exercise discretion with regard to such evaluations.

FLSA section 13(a)(1) provides an exemption from the minimum wage and overtime provisions for “any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of . . . teacher in elementary or secondary schools,” as those terms are defined in 29 C.F.R. Part 541. These regulations were revised effective August 23, 2004 (69 Fed. Reg. 22,122 (Apr. 23, 2004)). According to 29 C.F.R. § 541.303,

[t]he term “employee employed in a bona fide professional capacity” in section 13(a)(1) of the Act also 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.

The term “educational establishment” is defined in 29 C.F.R. § 541.204(b) to include “an elementary or secondary school system, an institution of higher education or other educational

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.

institution.” Additionally, “[f]actors relevant in determining whether post-secondary career programs are educational institutions include whether the school is licensed by a state agency responsible for the state’s educational system or accredited by a nationally recognized accrediting organization for career schools. For purposes of the exemption, no distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.” *Id.*

The regulations further provide that “[e]xempt teachers include . . . teachers of skilled and semi-skilled trades and occupations [and] teachers engaged in automobile driving instruction.” 29 C.F.R. § 541.303(b). Although possession of a teaching certificate is evidence of qualification for the exemption, a certificate to teach is not necessary if an individual is “employed as a teacher by the employing school or school system.” 29 C.F.R. § 541.303(c). Having a primary duty of teaching generally involves, “by its very nature, exercising discretion and judgment.” Wage and Hour Division Fact Sheet #17D. There is no salary requirement for the teaching exemption. 29 C.F.R. § 541.303(d).

Finally, unlike the learned professional exemption, there is no requirement that exempt teachers possess an advanced degree in a field of science or learning. *See* Wage and Hour Opinion Letter [FLSA2005-39](#) (Oct. 13, 2005). The structure of the new Part 541 separates the teaching exemption from the learned professional exemption by stating that “[t]he term ‘employee employed in a bona fide professional capacity’ in section 13(a)(1) of the Act *also* means any employee with a primary duty of teaching.” 29 C.F.R. § 541.303(a) (emphasis added).

Your client’s instructors have a primary duty of teaching and instructing students in automobile and boat repair. *See* 29 C.F.R. § 541.303(a). They impart their knowledge and experience upon their students, using their own methods of organizing, communicating and delivering the course materials. *Id.* They spend the majority of their time on teaching activities and assessing students’ performance, with the balance of their time spent on closely related activities such as class preparation, preparing and maintaining training aids, tools and equipment used in class and labs, and serving as a mentor to students. Furthermore, the career school qualifies as an educational establishment because it is accredited by the ACCSCT, a nationally recognized accrediting organization for career schools. *See* 29 C.F.R. § 541.204(b); *see also* *Gonzales v. New England Tractor Trailer Training Sch.*, 932 F. Supp 697, 702 (D. Md. 1996). Although the instructors do not possess teaching certificates from the state, they are certified by the ASE/ICAR and meet the state’s requirements for years of experience for teachers in a vocational school. Therefore, it is our opinion that the instructors at the career school qualify for the teaching exemption in section 13(a)(1) 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 this letter 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).**