



May 23, 2006

FLSA2006-17

Dear *Name**,

This is in response to your letter requesting an opinion concerning whether an employee who is paid in both U.S. Dollars and foreign currency may combine those two amounts in order to satisfy the minimum salary requirement for the application of the Fair Labor Standards Act (FLSA) executive, administrative, and professional exemption, 29 U.S.C. § 213(a)(1) and 29 C.F.R. Part 541 (copies enclosed). As you are aware, the Department revised these regulations and published its final rule in the Federal Register. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 69 Fed. Reg. 22,122 (April 23, 2004).

The employees in question are classified by their employer as "inpatriates." These inpatriates are foreign nationals who are temporarily residing in the U.S. and performing accounting and tax duties for a large accounting firm in the U.S. The employees simultaneously receive compensation in foreign currency from their employer's home-based country affiliate and U.S.-based compensation in dollars. The dollar portion of the compensation falls below \$23,660 per year. The total compensation, including the foreign currency portion, however, exceeds the equivalent of \$23,660 per year at all times. We assume for purposes of this response that the foreign compensation plus U.S. compensation exceeds the required \$455 a week, whether paid weekly, bi-weekly, or monthly.

You state in your letter that these employees satisfy all requirements for exemption, with the possible exception of the salary amount requirement. Our response is thus limited to the application of the salary amount aspect of the FLSA section 13(a)(1) exemption, found at 29 C.F.R. § 541.600(a), and assumes that all other applicable requirements of the exemption are met, including the salary basis requirement found at 29 C.F.R. § 541.602.

To qualify as an exempt executive, administrative, or professional employee under FLSA section 13(a)(1), an employee must be compensated on a salary basis at a rate of not less than \$455 per week, exclusive of board, lodging or other facilities. "The phrase 'exclusive of board, lodging or other facilities' means 'free and clear' or independent of any claimed credit for non-cash items of value that an employer may provide to an employee." 29 C.F.R. § 541.606(a). Administrative and professional employees may also be paid on a fee basis, as defined in 29 C.F.R. § 541.605.

You have described the inpatriates' total compensation as exceeding \$23,660 per year. Although, as described in 29 C.F.R. § 541.600(b), the \$455 per week requirement may be translated into equivalent amounts for periods of longer than one week (such as \$910 biweekly), the employer is not relieved from the obligation to meet all of the requirements under section 541.600 for each pay period for which the exemption is claimed. Thus, the total compensation package described above will meet the salary level requirements in those pay periods in which the \$455 per week equivalent threshold is met when the dollar compensation is combined with the foreign currency compensation that is converted using the exchange rate current at the time of payment (*i.e.*, the rate generally available to an individual person in the vicinity where the employee is working). In any pay period during which the total of the dollar compensation and dollar value of the foreign currency is less than \$455 per week, the exemption will not apply.

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



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

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,

Alfred B. Robinson, Jr.
Acting Administrator

Enclosures:
29 U.S.C. § 213(a)(1)
29 C.F.R. Part 541

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