



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

FLSA2008-1NA

February 14, 2008

Dear **Name***:

This is in response to your request for an opinion regarding the minimum salary for an exempt employee under section 13(a)(1) of the Fair Labor Standards Act (FLSA) and 29 C.F.R Part 541.* The Part 541 exemption is not available if the reduced salary falls below the minimum required by 29 C.F.R. § 541.600(a).

You ask whether the minimum salary of \$23,660 per year or \$455 per week required under 29 C.F.R. § 541.600 may be prorated to reflect the part-time status of an employee. You have provided an example of a full-time employee who is paid a salary of \$30,000 annually and whose hours are reduced to 20 hours per week with a commensurate reduction in salary to \$15,000 annually. You state that the employee meets the duties test for an exempt salaried employee. You ask whether the employee would still be exempt under section 13(a)(1) of the FLSA at the prorated salary of \$15,000.

There is no provision to prorate the salary requirement of \$455 per week when an employee's hours are reduced. The employee must receive a salary of at least \$455 in each week in which he or she performs any work regardless of the number of days or hours worked to qualify for the exemption in section 13(a)(1). *See* Wage and Hour Opinion Letter [FLSA2006-10NA](#). It is our opinion that the salary requirement of \$455 per week may not be prorated to reflect reduced hours, and the employee paid a salary of \$288 per week does not qualify for the exemption in section 13(a)(1) of the FLSA. A non-exempt employee, however, may be paid a salary to work 20 hours per week without violating the provisions of the FLSA if the amount of the salary paid when divided by the actual number of hours worked (less than 40) equals the equivalent of at least \$5.85 per hour. Whether an employee is paid on an hourly or salary basis is a decision left to the employer provided that the minimum wage and overtime requirements of the FLSA are met.

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 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.

* Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

You have also represented that this opinion is not sought in connections 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,

Monty Navarro
Office of Enforcement Policy
Fair Labor Standards Team

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