



February 14, 2003

FLSA2003-1NA

Dear *Name\**,

This is in response to your letter in which you request an opinion as to whether an administrative assistant in your law firm is a bona fide administrative employee, as defined in 29 C.F.R. 541.2, and entitled to exemption under the Fair Labor Standards Act (FLSA), 29 U.S.C. 213 (a)(1).

You state that the employee in question has duties requiring education and expertise far beyond that of other support staff. The employee has a bachelor's degree and has extensive knowledge of accounting, financial and other non-legal administrative services. He has also completed a two-hour Cline Williams Assistant Entrance Exam which involves grammar, reading comprehension/vocabulary, analytical reasoning and logical reasoning.

You believe that the employee exercises discretion and independent judgment as he coordinates meetings and interviews with clients, agencies, medical providers, investment advisors, insurance companies and institutional representatives and prepares corporate reports and minutes. He is a full-time employee paid a guaranteed annual salary and benefits. He spends less than 5% of his time on activities unrelated to direct client services or to direct support of executives in the firm. He develops his own procedures, assesses alternatives and provides a recommended course of action.

Section 13 (a)(1) of the FLSA provides a 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 Regulations, 29 CFR Part 541. In order to qualify for exemption under section 13 (a)(1), an employee must meet all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in the appropriate section of the Regulations.

An employee who is paid on a salary or fee basis of at least \$250 per week may qualify for exemption as a bona fide administrative employee if the employee's primary duty is office or nonmanual work directly related to management policies or general business operations of his or her employer (or the employer's customers) which includes work requiring the exercise of discretion and independent judgment.

The duties contemplated by the Regulations as being "directly related to management policies or general business operations" of an employer are those related to the administrative operations of a business, as distinguished from the basic tasks of the employer's business, that is, the "production" work of the business. The administrative exemption is limited to persons who perform work of substantial importance to the business of their employer or the employer's customers, and includes "white collar" employees engaged in "servicing" a business. Examples of such activity include personnel administration, labor relations, research, planning or assisting a management official to carry out the executive or administrative function of that official. In general, "administrative employee" means a person who is engaged in staff functions as opposed to the line functions of an employer.

The exercise of discretion and independent judgment implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. The term applies to the kinds of decisions normally made by persons who formulate or participate in the formulation of policy within their spheres of responsibility or who exercise authority within a wide range to commit their employer in substantial respects financially or otherwise.

Based on the information provided, it is our opinion that the administrative assistant does not meet the criteria to be exempt as an administrative employee. He does not appear to have the authority or power to make independent choices free from immediate direction or supervision with respect to matters of significance. Nor does he appear to be formulating policy or exercising the type of



authority within a wide range that could commit your firm in substantial respects financially or otherwise. Indeed, the administrative assistant is carrying out the day-to-day functions of your firm rather than its management policies or the management policies of your customers.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit 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 request might require a different conclusion than the one expressed herein.

We trust this information is responsive to your inquiry.

Sincerely,

Barbara R. Relerford  
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).*