



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

FLSA2008-6NA

May 8, 2008

Dear **Name***:

This is in response to your request for an opinion regarding whether salespersons employed by your client qualify for the outside sales exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA).^{*} It is our opinion that your client's salespersons are exempt outside sales employees.

Your client employs salespersons to sell novelty items at promotional events and other locations. The salespersons report to your client's place of business at 7:30 a.m. to retrieve the product from the employer's inventory as well as promotional brochures, receipt books, and folding tables. The salespersons also attend a motivational sales meeting before traveling to the assigned sales location/event. The salespersons sell the product at one location/event for approximately three to six days. Often, the salespersons sell the product outside the entrance of a retail store; alternatively, your client may have an arrangement to allow the salespersons to sell inside the store. The salespersons collect payments directly from customers. They return to your client's place of business by approximately 5:30 p.m. and turn over the proceeds from the sales, as well as any unsold product. The salespersons receive a sales commission based on a previously agreed rate.

Section 13(a)(1) of the FLSA provides a minimum wage and overtime exemption for outside sales employees as defined in 29 C.F.R. Part 541. An outside sales employee is any employee whose primary duty is making sales within the meaning of section 3(k) of the FLSA and "is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty." [29 C.F.R. § 541.500\(a\)\(2\)](#). Section 3(k) of the FLSA defines "sale" as "any sale, exchange, contract to sell, consignment for sale, . . . or other disposition." "Primary duty" is the "principal, main, major, or most important duty that the employee performs." [29 C.F.R. § 541.700\(a\)](#). The regulations further state that "work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including . . . collections, shall be regarded as exempt outside sales work. Other work that furthers the employee's sales efforts also shall be regarded as exempt work including . . . attending sales conferences." 29 C.F.R. § 541.500(b).

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

Under [29 C.F.R. § 541.701](#), “[t]he phrase ‘customarily and regularly’ means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed ‘customarily and regularly’ includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.” The regulations further define “engaged away from the employer’s place of business” for purposes of § 541.500(a)(2) as:

[t]he outside sales employee is an employee who makes sales at the customer’s place of business [A]ny fixed site, whether home or office, used by a salesperson as a headquarters . . . is considered one of the employer’s places of business [A]n outside sales employee does not lose the exemption by displaying the employer’s products at a trade show. If selling actually occurs, rather than just sales promotion, trade shows of short duration (*i.e.*, one or two weeks) should not be considered as the employer’s place of business.

[29 C.F.R. § 541.502](#). Also, under § 541.500(c), “[t]he requirements of subpart G (salary requirements) of this part do not apply to the outside sales employees.”

We conclude that the salespersons in question qualify for the outside sales exemption under section 13(a)(1) of the FLSA. First, the salespersons’ primary duty is selling novelty items within the meaning of section 3(k) of the FLSA. Other duties such as retrieving the product from the employer; attending motivational sales meetings; traveling to and from the location/event; and settling up with your client at the end of the day are examples of work performed incidental to and in conjunction with the salespersons’ sales or solicitations. These duties further the salespersons’ sales efforts and, therefore, are regarded as exempt work. *See* 29 C.F.R. §§ 541.500(b), .503.

Second, the salespersons are customarily and regularly engaged away from the employer’s place of business in performing their primary duty of selling novelty items. The salesperson spends most of his or her time at locations outside of your client’s office. The locations where the salesperson sells novelty items are fixed sites, but would not be considered the employer’s place of business because the salesperson remains there for only a short time period (approximately three to six days), and the sites are retail stores. *See* 29 C.F.R. § 541.502.

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,

Monty Navarro
Fair Labor Standards Team
Office of Enforcement Policy

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