



FLSA2007-5

February 1, 2007

Dear **Name***:

This is in response to your letter requesting an opinion regarding whether radiology technologists (RTs) qualify for the professional exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA) and 29 C.F.R. Part 541.¹ It is our opinion that radiology technologists are not exempt from the minimum wage and overtime requirements of the FLSA.

The RTs review physicians' orders for patient examinations and ensure that the examining room is properly prepared for the procedure. They visit patients to determine their tolerance to the examination and positioning, prepare patient information cards that are included on the film for identification, and position the patients to assure that the radiologist can see and access the proper area for the imaging procedure. RTs administer contrast and other chemicals orally or intravenously. They set technical factors on equipment, such as penetration and length of the imaging power; check radiation and imaging power factors for safety to the patient, technologist, and equipment; and operate the equipment for radiation and other imaging power exposure. RTs take the film to the darkroom for automatic processing and evaluate the adequacy of the film for reading by the radiologist. As needed, the RTs take additional images. They may also assist the radiologist in understanding particular cases and images taken.

Following the procedures, the RTs return patients to their proper area; clean tables and change linens; clean cassettes, aprons, gloves, and wheelchairs; check cassettes for contact and leakage, and aprons and gloves for leakage; and clean the film processor as required. They ensure that proper notations are made in the patients' records, and participate in maintaining departmental files, coordinating and scheduling of patients, and maintaining department inventories. The RTs maintain records of use according to state and federal regulations. They perform daily instrument calibration procedures on all instruments, make minor repairs to equipment, and report any major equipment problems to the department head. RTs carry out all of their duties without the need for constant supervision.

The RT position requires successful completion of a two-to-three-year radiology technology program accredited by the Joint Review Committee on Education in Radiologic Technology or some other manner of accreditation acceptable to the American Registry of Radiologic Technologists (ARRT). The RTs must pass an ARRT examination for registration. To renew the ARRT registration, an RT must meet certain continuing education requirements every two years.²

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

² According to ARRT, there are three options for meeting the continuing education requirements: "(1) earn 24 CE credits which meet the criteria set forth by the ARRT; or (2) pass a primary examination in a discipline not previously passed and for which the individual is eligible; or (3) pass one of the post-primary examinations not

Section 13(a)(1) of the FLSA exempts from its minimum wage and overtime pay provisions “any employee employed in a bona fide . . . professional capacity.” The exemption is determined not by occupational title or job classification, but rather by the duties and salary of the individual employee involved. *See* 29 C.F.R. § 541.2.

As discussed in 29 C.F.R. § 541.300, the term “employee employed in a bona fide professional capacity” in section 13(a)(1) of the FLSA includes “any employee:”

(1) Compensated on a salary or fee basis at a rate of not less than \$455 per week . . . exclusive of board, lodging, or other facilities; and

(2) Whose primary duty is the performance of work . . . [r]equiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

29 C.F.R. § 541.300.

Your inquiry does not include any information concerning the pay system for the RTs. Absent information to the contrary, we assume for the purposes of this letter that the first requirement is met and that the RTs are compensated on a salary or fee basis at a rate of not less than \$455 per week, exclusive of board, lodging, or other facilities. For more information on the salary basis requirement, see 29 C.F.R. § 541.600.

The primary duty test under the learned professional exemption in § 541.301(a) includes three elements: (1) The employee must perform work requiring advanced knowledge; (2) the advanced knowledge must be in a field of science or learning; and (3) the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. The phrase “work requiring advanced knowledge” means “work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work.” 29 C.F.R. § 541.301(b).

We do not believe that the RT position meets the primary duty requirements of 29 C.F.R. §§ 541.300-.301. First, the RT’s primary duty does not appear to require “knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.” 29 C.F.R. § 541.300(a)(2)(i). “The phrase ‘customarily acquired by a prolonged course of specialized intellectual instruction’ restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree.” 29 C.F.R. § 541.301(d). As the preamble to the Department’s 2004 revisions to the Part 541 final rule explained, jobs that “require only a four-year college degree in any field or a two-year degree as a standard prerequisite for

previously passed and for which the individual is eligible.” *See* ARRT’s *Continuing Education Requirements for Renewal of Registration* at www.arrrt.org/education/cereq.pdf.

entrance into the field . . . do not qualify for the learned professional exemption.” 69 Fed. Reg. 22,122, 22,150 (Apr. 23, 2004); Wage and Hour Opinion Letters FLSA2005-35 (Oct. 3, 2005) and Jan. 17, 1985 (copy enclosed). The requirement that an RT complete a two- to three-year radiology technology program accredited by the Joint Review Committee on Education in Radiologic Technology (or some other manner of accreditation acceptable to the ARRT), along with an ARRT examination for registration, does not appear to meet this regulatory standard.

Moreover, the regulations identify specific academic requirements for exemption of registered or certified medical technologists, and the RTs in your inquiry do not seem to meet these requirements:

Registered or certified medical technologists who have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association generally meet the duties requirements for the learned professional exemption.

29 C.F.R. § 541.301(e)(1).

The work of an RT requires two to three years of study in a program meeting certain requirements, rather than three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education. The existence of a mandatory, accredited certification program, as is the case for the RTs, does not override the regulatory requirement for a prolonged course of specialized intellectual instruction for entry into the field. As further explained in the preamble to the final rule:

[a]ccredited curriculums and certification programs are relevant to determining exempt learned professional status to the extent they provide evidence that a prolonged course of specialized intellectual instruction has become a standard prerequisite for entrance into the occupation as required under section 541.301. Neither the identity of the certifying organization nor the mere fact that certification is required is determinative, if certification does not involve a prolonged course of specialized intellectual instruction.

69 Fed. Reg. 22,157.

Second, the RTs’ work involves the use of advanced skills and procedures that are vitally important to the professional work of the radiologist who analyzes and interprets the images. The RTs’ work, however, does not appear to be “work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work.” 29 C.F.R. § 541.301(b). The procedural work performed by the RTs is highly skilled and requires significant training, but seems to be more in the character of routine mental, manual, mechanical and physical processes than intellectual work requiring the consistent exercise of discretion and judgment. *See* 29 C.F.R. § 541.301(d). The “learned

professional” activity in this area appears to be the practice of medicine involved in the analysis and interpretation of the images developed by the radiologist.

For these reasons, it is our opinion that these employees do not qualify for the “learned professional” exemption, and they must be paid in accordance with the minimum wage and overtime pay provisions 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 the above information 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).**