



January 7, 2005

FLSA2005-8

Dear *Name\**,

This is in response to your inquiry whether a particular job description for an employee meets the criteria for the administrative exemption under Section 13(a)(1) of the Fair Labor Standards Act (FLSA). The Department recently updated and strengthened the FLSA regulations implementing minimum wage and overtime requirements, which became effective August 23, 2004. The new, clearer overtime security rules will help ensure that employees understand their rights, that employers understand their legal obligations, and that the Department is able to effectively enforce the law.

The job description you provided is as follows:

1. data entry for accounts payable & accounts receivable—(no signing authority);
2. modify account names/attributes in Quickbooks for improved job costing/profit accounting at year end;
3. word processing for job contracts, lien waivers, letters, labels;
4. send notices to subcontractors regarding updating their workers' comp/liability insurance; maintain notebook of paper file for each subcontractor;
5. receptionist duties—answering phones, taking messages, sign for package deliveries;
6. order routine office supplies (paper, pens, notebooks, post-its, etc.).

The FLSA requires that all covered and non-exempt employees be paid not less than the minimum wage, \$5.15 an hour, for all hours worked and overtime pay for all hours worked over 40 in a workweek. Section 13(a)(1) of the FLSA provides a complete 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 the new regulations 29 CFR Part 541 (copy enclosed). An employee may qualify for exemption as a bona fide administrative employee if all the pertinent tests relating to duty, salary level and salary basis are met. For discussion purposes, we assume that this employee is compensated on a salary basis of at least \$455 per week as required.

As discussed in the updated regulations section 541.200, the term "employee employed in a bona fide administrative capacity" in Section 13(a)(1) of the FLSA shall mean any employee: (1) compensated on a salary or fee basis of at least \$455 per week; (2) whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and (3) whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

"The phrase 'directly related to management or general business operations' refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment." 29 CFR 541.201(a).

"Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities." 29 CFR 541.201(b).

"An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, for example, employees acting as advisers or consultants to their employer's clients or customers (as tax experts or financial consultants, for example) may be exempt." 29 CFR 541.201(c).



“To qualify for the administrative exemption, an employee’s primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term ‘matters of significance’ refers to the level of importance or consequence of the work performed.” 29 CFR 541.202(a).

“The phrase ‘discretion and independent judgment’ must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee’s assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.” 29 CFR 541.202(b).

As the preamble to the final rule explained, 69 Fed. Reg. 22122, 22143 (April 23, 2004), federal courts generally find that employees who meet at least two or three of these factors mentioned above are exercising discretion and independent judgment, although a case-by-case analysis is required. Based on the information you provided, we do not believe that the duties and responsibilities of this employee meet the primary duty test for the administrative exemption. Among other things, it appears that the employee does not have the authority to make independent choices, free from immediate direction and supervision as required by section 541.202(c). Rather, the employee is simply performing duties that involve clerical or secretarial work, recording or tabulating data, and performing other mechanical, repetitive and routine work. The regulations clarify that such work does not involve the exercise of discretion and independent judgment. 29 CFR 541.202(e). It is our opinion that this employee cannot qualify for the administrative exemption under the updated regulations at 29 CFR 541.200. Hence, this employee is covered by the minimum wage and overtime provisions of the FLSA.

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 which 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. 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 is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.  
Acting Administrator

*Note: \* The actual name(s) was removed to preserve privacy.*