



November 4, 2005

FLSA2005-50

Dear *Name\**,

This is in response to your letter requesting an opinion on the application of section 13(a)(1) of the Fair Labor Standards Act (FLSA) to certain employees of one of your clients, a private, non-profit, tax-exempt, multi-county social service agency. Your client's mission is to strengthen family life by providing counseling, education, and advocacy programs to individuals and families through the work of over 160 employees.

The positions about which you inquire are Social Worker and Caseworker. You have included a job description of each, but do not indicate how they are paid or how much. You indicated that Social Workers must have a master's degree in social work, drug and alcohol, education, counseling, psychology, or criminal justice, plus two years of post-masters experience. Social Workers make independent decisions about the course of therapy best suited to the needs of individuals and families with whom they work. They may form an impression of the diagnosis, develop a treatment plan, and utilize a variety of therapeutic approaches to help clients resolve personal problems. Social Workers function as therapists and may provide 24-hour crisis services.

Caseworkers must have a bachelor's degree in social sciences. You say that "Caseworkers in most Agency programs provide case management services such as providing in person supervision of volunteer-client matches or adoptive placements or facilitating services for adolescents in foster care who are being prepared for independence....They may provide specialized services such as supportive, interactive or training groups for adolescents, volunteers or prospective caretakers. They may conduct assessments or homestudies....They may refer their clients to other community services ... in the in-home counseling programs [they] perform the exact same duties as the Social Worker. They assess client needs; and provide therapy/counseling."

As you know, 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 29 C.F.R. Part 541 (copy enclosed).

An employee may qualify for exemption if all of the pertinent tests relating to duties, responsibilities, and salary are met. The information you have provided has been considered under section 13(a)(1)'s new implementing regulations that took effect on August 23, 2004. Since the employees in question do not supervise other employees and their work is not directly related to the management or general business operations of the agency or its customers, these employees cannot qualify for either the executive or administrative exemption. See 29 C.F.R. §§ 541.100-200. Their work is therefore considered only under the provisions of the professional exemption of 29 C.F.R. § 541.300.

The new regulations define the term "employee employed in a bona fide professional capacity" to mean any employee: "(1) compensated on a salary or fee basis at a rate of not less than \$455 per week, ... and (2) whose primary duty is the performance of work: (i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (ii) requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor." 29 C.F.R. § 541.300(a).

The primary duty test under the learned professional exemption "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." 29 C.F.R. § 541.301(a). 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. *Id.* § 541.301(b). 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. *Id.* § 541.301(d). “The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree.” *Id.*

The provisions of this exemption must be considered on an employee-by-employee basis. However, based on the information you have provided, those Social Workers with master’s degrees who work in the field of their degree, will generally meet the above criteria. Social work conducted at this level requires advanced knowledge in a “field of science or learning” and has the recognized professional status required by the regulation. See WH Opinion Letters January 24, 2001 and March 30, 1999 (copies enclosed). Social Workers who meet these criteria and who are paid on a salary or fee basis of not less than \$455 per week meet the requirements for the learned professional exemption of 29 C.F.R. § 541.300.

You have stated that the only academic requirement for the Agency’s Caseworkers is a bachelor’s degree in the social sciences. The course of study for a bachelor’s degree in “social sciences” does not constitute the “specialized” academic training necessary to qualify an occupation for the learned professional exemption. Thus, *specialized* academic training is not a standard prerequisite for their employment. “[T]he learned professional exemption is not available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, ... The learned professional exemption also does not apply to occupations in which most employees have acquired their skill by experience rather than by advanced specialized intellectual instruction.” 29 C.F.R. § 541.301(d). Only occupations that customarily require specialized academic training are considered learned professional fields under the regulations; occupations that do not customarily require specialized academic training at the level intended by the regulations as a standard prerequisite to enter the field do not qualify for the learned professional exemption. *Id.* Because you have stated that the occupation of Caseworker does not customarily require specialized academic training, since the only prerequisite for this occupation is a bachelor’s degree in social sciences, we conclude that the Caseworkers do not meet the requirements of the learned professional exemption. Therefore, the Caseworkers are not exempt from the minimum wage and overtime requirements 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. This opinion is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. See 29 C.F.R. §§ 790.17(d), 790.19; *Hultgren v. County of Lancaster*, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above information is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.,  
Deputy Administrator

Enclosures: 29 C.F.R. Part 541  
WH Opinion Letters January 24, 2001 and March 30, 1999

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