



FLSA2008-4NA

February 29, 2008

Dear **Name***:

This is in response to your request for an opinion regarding whether plant managers employed by your client qualify for either the executive or administrative exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA).¹ Based on a review of the information provided, and subject to the assumptions contained herein, it is our opinion that the plant managers qualify as exempt executive employees. Because of this determination, we do not analyze the position under the administrative exemption.

You state that your client is in the ready-mix concrete business. Your client operates production facilities called “batch plants” and employs a plant manager at each batch plant. The plant manager hires all personnel assigned to his or her batch plant. In a follow-up discussion with a member of my staff, you asked us to assume that the plant manager customarily and regularly supervises and directs the work of at least two full-time employees, disciplines employees, and recommends employee terminations. Moreover, you indicated that the plant manager spends more than half of his or her time managing the plant, including supervising employees. The plant manager’s other duties include scheduling and verifying employee work hours, conducting safety meetings at least once a month, enforcing all safety rules at the plant, ensuring that all trucks assigned to the plant are staffed, forecasting raw material consumption, ensuring that adequate raw material is available at the plant, and maintaining the quality of the ready-mix concrete. During the conversation with my staff member, you also stated that the plant managers, if they are determined eligible for the exemption, will receive at least \$455 per week on a salary basis.

Section 13(a)(1) 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 29 C.F.R. Part 541. An employee may qualify for exemption if all of the tests relating to duties and salary are met.

Under [29 C.F.R. § 541.100\(a\)](#), the term “employee employed in a bona fide executive capacity” means “any employee”:

- Compensated on a salary basis at a rate of not less than \$455 per week;
- Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

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.

- Who customarily and regularly directs the work of two or more other employees; and
- Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

Management, as discussed in the regulations, includes such activities as “interviewing, selecting, and training of employees”; “setting and adjusting their . . . hours of work”; “directing the work of employees”; “maintaining . . . records for use in supervision or control”; “appraising employees’ productivity and efficiency for the purpose of recommending . . . changes in status”; “disciplining employees”; “planning the work”; “apportioning the work among the employees”; “determining the type of materials . . . to be used”; “controlling the flow and distribution of materials”; and “providing for the safety and security of the employees or the property,” among others. [29 C.F.R. § 541.102.](#)

Section 541.700(a) defines an employee’s “primary duty” as the “principal, main, major or most important duty that the employee performs” based on all the facts in each case with the primary emphasis on the character of the employee’s job as a whole. As further explained in [29 C.F.R. § 541.700\(b\)](#), although time alone is not dispositive, “[t]he amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement.”

Based on the foregoing analysis, we conclude that the plant managers you described meet the requirements of § 541.100(a)(2)-(4). The primary duty of the plant manager is management of the batch plant, which consumes a majority of the plant manager’s time. The plant manager’s duties include supervising at least two full-time employees, scheduling work hours, directing employees, maintaining records, appraising and disciplining employees, planning and apportioning the work, determining the type of materials to be used and controlling their distribution, conducting safety meetings, and enforcing safety rules. The plant manager hires new employees and recommends employee terminations. Therefore, based on the information provided, and assuming that the plant manager receives at least \$455 per week on a salary basis, it is our opinion that the plant managers you describe qualify for the executive exemption under section 13(a)(1) of the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and follow-up discussion with our staff 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).**