



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

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FLSA2008-9

October 1, 2008

Dear **Name\***:

This is in response to your request for an opinion regarding whether instructors in a cosmetology school qualify for the professional exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA).<sup>1</sup> In our opinion the instructors qualify as teachers under section 13(a)(1) and therefore are exempt from the minimum wage and overtime provisions of the FLSA.

You state that you are a private, for-profit educational institution licensed by the State Board of Cosmetology and accredited by the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS).<sup>2</sup> The instructors are licensed in the field of cosmetology, and are licensed specifically as instructors by the State Board of Cosmetology. You believe these instructors are exempt because (1) they work in a school that is accredited by the NACCAS and is therefore an educational establishment, and (2) the instructors are teachers of skilled or semi-skilled trades and occupations.

FLSA section 13(a)(1) provides an exemption from the minimum wage and overtime provisions for “any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of . . . teacher in elementary or secondary schools) . . .” as those terms are defined in 29 C.F.R. Part 541. An “employee employed in a bona fide professional capacity” includes “any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed.” *Id.* [§ 541.303\(a\)](#).

An “educational establishment” is defined in [29 C.F.R. § 541.204\(b\)](#) to include “an elementary or secondary school system, an institution of higher education or other educational institution.” Determining whether a post-secondary career program is such an educational institution includes considering:

whether the school is licensed by a state agency responsible for the state’s educational system or accredited by a nationally recognized accrediting organization for career schools. Also, for purposes of the exemption, no

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<sup>1</sup> Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at [www.wagehour.dol.gov](http://www.wagehour.dol.gov).

<sup>2</sup> The NACCAS is recognized by the U.S. Department of Education as a national accrediting agency under the provisions of 20 U.S.C. § 1099b. See <http://ope.ed.gov/accreditation/> for more information.

distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.

*Id.*

The regulations further provide that “[e]xempt teachers include . . . teachers of skilled and semi-skilled trades and occupations . . .” *Id.* § 541.303(b). Although possession of a teaching certificate is evidence of qualification for the exemption, a certificate to teach is not necessary if an individual is “employed as a teacher by the employing school or school system.” *Id.* § 541.303(c). Having a primary duty of teaching generally involves, “by its very nature, exercising discretion and judgment.” Wage and Hour Division [Fact Sheet #17D](#). There is no salary requirement for the teaching exemption. *See* 29 C.F.R. § 541.303(d). Finally, unlike the learned professional exemption, there is no requirement that exempt teachers possess an advanced degree in a field of science or learning. *See* Wage and Hour Opinion Letter [FLSA2006-41](#) (Oct. 26, 2006); and Wage and Hour Opinion Letter [FLSA2005-39](#) (Oct. 13, 2005).

You state that the instructors’ primary duty is teaching and instructing students in cosmetology theory, as well as in the practical part of the curriculum. In a conversation with a member of my staff, you advised that the instructors teach classes all day except for a one-hour period allotted for class preparation. The cosmetology school meets the regulatory requirements to be considered an “educational establishment” because it is accredited by the NACCAS, a nationally recognized accrediting commission for cosmetology schools. *See* 29 C.F.R. § 541.204(b); Wage and Hour Opinion Letter [FLSA2006-41](#); and Wage and Hour Opinion Letter [FLSA2005-39](#). Although the instructors do not possess teaching certificates, they are licensed by the State Board of Cosmetology as instructors. Therefore, it is our opinion that the instructors at the cosmetology school qualify for the teaching exemption in section 13(a)(1). To the extent that they are inconsistent with this letter, Wage and Hour Opinion Letter [FLSA-957](#) (July 11, 1985) and Wage and Hour Opinion Letter [FLSA-775](#) (June 21, 1985) are hereby withdrawn.

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 this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino  
Acting Administrator

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