

FLSA-500

February 22, 1972

This is in reply to your letter of January 4, 1972, concerning whether deductions for holidays on which no work is performed would alter the status of your instructors as professional employees or the status of your executive and administrative personnel, under the Fair Labor Standards Act.

One of the requirements that must be met by an executive, or administrative employee in order to qualify for the exemption provided under section 13(a)(1) of the Fair Labor Standards Act is payment on a salary basis at the prescribed minimum set forth in our Regulations, Part 541. The discussion in section 541.118 of the regulations describes the circumstances in which certain deductions may be made which would not alter as valid an employee's salary method of compensation. For example, deductions may be made for absences of a day or more occasioned by sickness or disability (including industrial accidents), if such deductions are made in accordance with a bona fide plan, policy or practice, or when an employee absents himself from work for a day or more for personal reasons, other than sickness or accidents.

However, it is clear that the deduction you have in mind for not working a holiday is not a type of deduction permitted by Regulations, 541.118. Therefore, subject to the exceptions mentioned therein, the salaries of the executive and administrative personnel concerned must be paid in full for any week in which he performs any work without regard to the number of days or hours worked. In all cases the regulations, in order for the exemption to apply, contemplate receipt by the employee of the stipulated amount on a salary basis which is free and clear in the sense that it is not subject to reduction by reason of the operating requirements of the job he holds.

Insofar as the question of any deduction from the salaries of the instructors is concerned, they appear to meet the requirements of section 541.3 of the regulations as employed in the capacity of a teacher and are recognized as such by the employing educational institution. Section 541.3(e) specifically excludes such teachers from the salary or fee requirement for exemption. Thus, the question of any deduction from their weekly salary for a holiday on which they do not perform any work is a matter of private arrangement between the employer and the employee, or his authorized representative.

Sincerely,

Horace E. Menasco
Administrator