



WHD-OL-1982-0002

April 15, 1982

NAME*

This is in reply to your letter of February 18, 1982, concerning the application of the exemption in section 13(a) (1) of the Fair Labor Standards Act to a registered nurse. The RN will be evaluating the results of stress tests done on patients of a clinic. Your client proposes to pay the RN on the basis of a certain amount per test evaluation, the amount of which would not vary from test to test.

You ask us to assume that the employee's primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. You ask if the amount of compensation received by the employee was at least equal to \$250 for the equivalent of a 40 hour workweek, would this represent compensation on a fee basis, as discussed in section 541.313 of Regulations, 29 CFR Part 541, so that the employee could qualify for exemption as a bona fide professional employee under the upset salary proviso in section 541.3(e) of the regulations.

As indicated in section 541.313, fee payments in a sense resemble piecework payments with the important distinction that generally speaking a fee payment is made for the kind of job which is unique rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. While the information in your letter does not give sufficient detail concerning the stress test evaluations and other work duties, if any, performed by the employee in question, it appears that the RN is performing a series of jobs repeated an indefinite number of times for which identical payments would be made over and over again. Thus, such employee would not be compensated on a salary or fee basis within the meaning of sections 541.313 and 541.3(e) of the regulations.

However, if the employee in question were to be guaranteed at least \$250 per week as indicated in section 541.118(b), which amount constituted all or part of his/her compensation and which amount was not subject to reduction because of variations in the quality or quantity of the work performed, he/she would qualify for exemption as a bona fide professional employee under the upset salary proviso of section 541.3(e) of the regulations. As noted in section 541.118, such an employee could also receive additional compensation based on a fixed amount per test evaluation without affecting his/her exempt status.

We hope this has satisfactorily responded to your inquiry. Please let us know if you have further questions.

Sincerely,

William M. Otter
Administrator

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