

FLSA-1009

January 17, 1985

This is in reply to your letter of December 12, 1984, requesting an opinion as to whether a diagnostic medical sonographer is an exempt professional employee under section 13(a)(1) of the Fair Labor Standards Act (FLSA) and Regulations, 29 CFR Part 541.

You have enclosed the employment credentials of a particular individual whom *** the Group is about to hire. The individual's education consists of two years of training as a radiologic technologist and two years of training in diagnostic ultrasound technology. The individual is registered as a radiologic technologist and also as a diagnostic medical sonographer.

A medical sonographer operates different types of ultrasound equipment in performance of diagnostic examinations of the patient, as ordered by the physician, and reports the findings to the patient's physician. Diagnostic examinations require a thorough knowledge of equipment operation and skills in locating, distinguishing, and measuring the various parts of the human body.

Section 13(a)(1) of the FLSA provides a minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, professional, or outside sales capacity. In order to qualify for exemption under section 13(a)(1), an employee must meet all of the pertinent tests relating to duties, responsibilities, and salary as contained in 29 CFR Part 541 (copy enclosed).

One of the tests for professional status under section 541.3(a)(1) requires that the employee perform work which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. For example, the professions of law, medicine, nursing, and theology have been traditionally recognized as professional within the meaning of section 541.3, since such professions require a prolonged course of specialized intellectual instruction. See sections 541.301 and 541.302. Further examples of professions meeting the requirement for a prolonged course of specialized intellectual instruction and study are given in section 541.301 (e)(1).

A "prolonged course ... study" has generally been held to include only those employees who have acquired at least a baccalaureate degree or its equivalent which includes an intellectual discipline in a particular course of study as opposed to a general academic course otherwise required for a baccalaureate degree. Work which can be performed by employees with education and training which is less than that required for a bachelors's degree would not be work of a bona fide professional level within the meaning of the regulations.

It is clear the medical sonography work involves the use of skills and procedures which do not require four years of college or university training to obtain a degree in a professional discipline. The information provided suggests that a diagnostic medical sonographer is best characterized as a skilled nonexempt technician.

The fact that the particular individual about whom you are concerned also has two years of additional training in radiologic technology does not change our conclusion. Radiology technicians are also considered to be nonexempt technicians under the tests described above.

We trust that the above is responsive to your inquiry. Please let us know if you have further questions.

Sincerely,

William M. Otter
Administrator