

U.S. Department of Labor

Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210



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Dear

This is in further response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to an account representative (AR) of your client (the Company). You ask whether the AR qualifies as an exempt administrative employee under section 13(a)(1) of the FLSA. We regret the delay in responding to your inquiry.

You state that the Company provides services to manufacturers who have adopted "cents-off" coupons to promote the sale of their products to consumers. Your client's services include monitoring coupon redemption by retailers, screening the validity of coupons presented for redemption to prevent fraud, reimbursing the retailer, and providing marketing information to the manufacturer.

The AR is responsible for servicing and maintaining the coupon redemption program established for the manufacturer. The AR analyzes and evaluates the redemption process and makes recommendations to the manufacturer about expanding its coupon promotion program. The AR also provides information about market trends for that manufacturer, and helps with forecasting of the performance of a coupon promotion. The AR handles 100 to 200 cents-off coupon promotions per year on behalf of the manufacturer. You indicate that the AR spends 50 percent of his or her time in such "marketing" activity.

In addition, the AR insures that the manufacturer's promotion account contains sufficient funds to cover retailer coupon redemptions, and pays the retailers on behalf of the manufacturer, provided he or she has not detected any fraud or misredemptions. The AR also maintains payment files. The AR spends about 25 percent of his or her time in this "financial" aspect of the job.

The AR also provides information about services and reports which the company can furnish to manufacturers' sales departments that are interested in coupon promotions to enhance product sales. The AR spends about 5 percent of his or her time in such "sales" activities.

Finally, the AR participates in "management" meetings to assist in establishing procedures and enhancing the team spirit of the Company. About 20 percent of his or her time is spent in such meetings. You indicate compensation for the AR position is \$20,000 with a mid-range of \$25,000, presumably on a salary basis.

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 as those terms are defined in Regulations, 29 CFR Part 541. In order to qualify for exemption under §13(a)(1), an employee must meet all of the pertinent tests relating to duties, responsibilities, and salary as discussed in the appropriate section of the Regulations. An employee who is paid on a salary or fee basis of at least \$250 per week may qualify for exemption as a bona fide administrative employee if the employee's primary duty (see §541.103 for a discussion of this term) is office or nonmanual work directly related to management policies or general business operations of his or her employer (or the employer's customers) that includes work requiring the exercise of discretion and independent judgment. A determination of the exempt or nonexempt status of an employee must be made on an individual basis that takes into account all of the pertinent facts relating to the actual work performed by the employee in question.


Activities contemplated by the Regulations as being "directly related to management policies or general business operations" of an employer are those related to the administrative operations of a business, as distinguished from the basic tasks of the employer's business, that is, the "production" work of the business. The administrative exemption is limited to persons who perform work of substantial importance to the business of their employer or the employer's customers, and includes "white collar" employees engaged in "servicing" a business. Examples of such activity include personnel administration, labor relations, research, planning, or assisting a management official to carry out the executive or administrative function of that official. In general, "administrative employee" means a person who is engaged in staff functions as opposed to the line functions of an employer. In this regard, see §541.205 of the Regulations.

Based upon the information you have provided, it appears that the AR's primary duty involves the basic tasks of your client's business - coupon promotion redemptions for manufacturers using its services - i.e. the "production" work of your client. In this regard, we note that the AR handles 100 - 200 promotions per year

on behalf of the customer. We conclude, therefore, that the AR is carrying out the day-to-day functions of your client's business rather than its management policies or the management policies of your client's customers. Where such an employee's primary duty consists of such nonexempt work, the employee cannot be found to be qualified for exemption as a bona fide administrative employee under §541.2 of the Regulations. Since the AR is a nonexempt line employee, he or she must be paid in accordance with the minimum wage and overtime compensation provisions of the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit 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 request might require a different conclusion than the one expressed herein. You have also represented that this opinion is not sought on behalf of a client or firm that is under investigation by the Wage and Hour Division, or that is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with, the provisions of the FLSA.

Sincerely,

  
Daniel F. Sweeney  
Deputy Assistant Administrator