

## **FLSA-1305**

April, 19, 1995

This is in response to your letter of December 7, 1994, concerning the application of the minimum wage and overtime pay exemption contained in section 13(a)(1) of the Fair Labor Standards Act (FLSA) to Registered Nurses (Rns) employed by \*\*\*, a home care agency. You specifically ask if the method by which \*\*\* plans to pay its Rns would satisfy the "salary basis" requirement for exemption, as discussed in section 541.118 of Regulations, 29 CFR Part 541.

You state that for purposes of this request we may assume that the Rns meet all the duties and responsibilities tests for exemption as bona fide professional employees, as described in section 541.3 of the Regulations. The Rns would be paid a predetermined amount of compensation on a weekly, or less frequent basis. This amount would be in excess of the amount specified in the Regulations, and would not be subject to reduction because of variations in the quality or quantity of the work performed. Subject to the deductions permitted by section 541.118 of the Regulations, the employees would receive their full salaries for any workweek in which they perform work without regard to the number of days or hours worked.

You further state that \*\*\* also desires to pay a productivity bonus to each of the Rns in question in addition to their salaries. The productivity bonus would be calculated based on the number of patient visits completed by the Rns during an established period of time that are in excess of a stated minimum number of visits during that same period of time. In other words, the Rns, in addition to their salaries, would earn a lump sum amount for each patient visit completed over "x" number of visits in a workweek, in a pay period, in a fiscal quarter, or in some other established time period.

It is our opinion that where the Rns in question are guaranteed a salary of at least \$250 per week, which amount constitutes all or part of their compensation and which amount is not subject to reduction because of variations in the quality or quantity of the work performed, they would qualify for exemption as bona fide professional employees under the upset salary proviso of section 541.3(e) of the Regulations. Such employees may be paid additional compensation in the form of a productivity bonus, as you describe, without affecting their exempt status.

We trust that this satisfactorily responds to your inquiry.

Sincerely,

Maria Echaveste  
Administrator

Enclosure