



WHD-OL-1996-NNNN

June 28, 1996

NAME*

This is in response to your letter requesting an opinion on behalf of your client as to the application of the executive and administrative exemptions provided in section 13(a) (1) of the Fair Labor Standards Act (FLSA) to three of your client's employees. With your request you have provided descriptions of the three positions in question, social work director, administrative assistant, and facility and administrator coordinator. You have asked about the application of the executive exemption to the social work director and the administrative exemption to the administrative assistant and administrator coordinator of a medical practice group.

It should be emphasized that application of the administrative and executive exemptions turns on the actual duties, responsibilities and salary of the employees. Job titles and general descriptions of employee functions in position description which vary from the actual duties performed by the employee are not an accurate basis for determining the exempt status of an employee.

From the information you have provided, we would characterize the duties of the social work director as not satisfying the requirements of the executive exemption. You have stated that the employee in question supervises only one employee. The regulatory criteria for the FLSA's section 13(a) (1) executive exemption are provided at 29 C.F.R. 541.1, which provide, in pertinent part, that the executive exemption is applicable to employees who customarily and regularly direct the work of two or more other employees. The requirement can be satisfied by the supervision of two full-time employees working 40-hour weeks of any number of part-time employees as long as the total number of hours supervised exceeds 80. Secretary of Labor v. Daylight Dairy Products, Inc., 779 F.2d 784 (1st Cir. 1985). This 80-hour requirement applies even if the nature of the employer's operations require little supervision. Dole v. Pape Gino's of America, Inc., 712 F. Supp. 1038 (D. Mass. 1989). Since the employee in question does not satisfy this basic requirement, it is not necessary to consider the application of the other criteria of the exemption to the duties of this employee.

We also conclude that the position of administrative assistant and facility and administrative coordinator do not satisfy the requirements for the administrative exemption. The regulatory criteria for the FLSA's section 13(a) (1) administrative exemption are provided at 29 C.F.R. 541.2, which provide, in pertinent part, that the administrative exemption is applicable to employees who perform "... office or nonmanual work directly related to management policies

or general business operations of his employer or his employer's customers" That provision has been interpreted to involve the running of the business itself or determining its overall course or policies, as opposed to the day-to-day carrying out of the business' affairs. Bratt v. County of Los Angeles, 912 F.2d 1066 (9th Cir. 1990); Reich v. State of New York, 3 F.3d 581 (2nd Cir. 1993).

You have identified the duties of the administrative assistant as involving the collection and dissemination of information and the production and distribution of policy and procedural manuals. The individual in this position also types such manuals and types and distributes the job descriptions of all employees. The facility and administrator coordinator is primarily responsible for inventory control and the paperwork and coordination necessary for shipments to satellite clinics, including forwarding shipping documents to the accounting department and coordination with the appropriate carrier (Federal Express, UPS, etc.). This employee also has various other duties relating to the printing and distribution of in-house forms, coordination of office moves, and responsibility for maintenance of the office vehicle.

On the basis of these duties, we do not believe that the positions of administrative assistant and facility and administrative coordinator satisfy the requirements described above for the administrative exemption. These employees perform technical tasks, which do not constitute making or implementing policy or the performance of management functions, necessary for the application of the exemption. The tasks performed by these employees may be important to the operation of the employer's business, but they are not the tasks inherent in a management position subject to the administrative exemption.

We trust that the above information is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team

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