



WHD-OL-2001-0001

January 24, 2001

Dear NAME*

This is in reply to your letter requesting an opinion as to whether Social Caseworker II and III are exempt professionals employees under section 13(a) (1) of the Fair Labor Standards Act (FLSA). You ask that we assume that these positions meet the salary basis test of the FLSA.

You ask whether the educational requirements for the Social Caseworker II and III positions satisfy the "advanced learning" requirement for the professional exemption, and do the job duties satisfy the "discretion and independent judgement" test.

You indicate that all Social Caseworker II positions require the employee to have a master's degree in social work or human behavioral science, or to have a bachelor's degree with a major in human behavioral science, together with one year of professional caseworker experience acquired after the degree in a public or private social services agency. To meet the human behavioral science degree requirement, the employee must have at least 30 semester hours or 45 quarter hours either in development of human behavior, child development, family intervention techniques, diagnostic measures of therapeutic techniques such as social work, psychology, sociology, guidance and counseling, and child development. Educational requirements for Social Caseworker III positions are the same except that at least two years of professional caseworker experience acquired after obtaining the bachelor's degree is required.

The job duties and responsibilities for Caseworker II and III include taking those actions appropriate to insure that every child has a permanent home that provides physical and emotional safety; promoting the development of social and personal competence and fostering the well being of the child; effectively investigating allegations of abuse and neglect through formulation of appropriate questions and follow-up questions; assessing the needs of the child and family; developing and recommending to the court an appropriate treatment plan based on the particular situation of the child and family; evaluating child and family progress; making decisions regarding out-of-home placement if necessary, and determining a permanency plan for the child, whether it be to return home to the birth parent or recommend to the court the parental rights be terminated and the child made available for adoption.

Caseworkers must decide what actions are necessary based on the facts of each individual case. They are regularly required by circumstances to make decisions in emergency situations where there is no opportunity or time to seek supervisory assistance or conduct significant analysis of the options. Caseworker II's are not supervised on a daily basis. They receive a bi-monthly or monthly supervisory review of their work. Caseworker III's receive only monthly reviews.

Section 13(a) (1) of the FLSA provides a complete 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 the pertinent tests relating to duties, responsibilities, and salary as contained in Regulations, 29 CFR Part 541 (copy enclosed).

A “prolonged course of . . . 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 bachelor’s degree would not be work of a bona fide professional level within the meaning of the regulations.

The exercise of discretion and independent judgement, in general, involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after various possibilities have been considered. The term implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. An employee who merely applies his knowledge in following prescribed procedures or determining which procedure to follow, or who determines whether an object falls into one or another of a number of definite grades, classes or other categories is not exercising discretion and independent judgement within the meaning of section 541.3, even if there is some leeway in reaching a conclusion.

Based on the information you have provided, we conclude that the position of Social Caseworker II and II meet the professional exemption as outlined in the Regulations.

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 which 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 which is under investigation by the Wage and Hour Division, or which 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.

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

Sincerely,

Barbara R. Relford
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).