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1998 WL 852783  
1998 WL 852783 (DOL WAGE-HOUR)

Page 1

Wage and Hour Division  
United States Department of Labor

Opinion Letter  
Fair Labor Standards Act (FLSA)  
April 17, 1998

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Your letter addressed to Secretary Herman was referred to this office for reply. You request an opinion as to whether the journeyman investigator positions within the \*\*\* meet the criteria for the administrative or professional exemption under the Fair Labor Standards Act (FLSA).

\*\*\* is a statutory division located within the \*\*\* It is charged with the licensing of \*\*\* 9,000 plus member liquor industry, developing and implementing liquor regulations, enforcing State liquor law statutes and regulations, and reporting agency activities and enforcement operations to the legislature on an annual basis.

The division's investigative staff is comprised of intern investigators and fully functional journeyman investigators. Based on information provided to a member of my staff, all investigators are required to have either a four-year college degree or four years of investigative law enforcement experience. All investigative staff must have attended a basic peace officer certification academy in \*\*\* or an equivalent academy in another State or with the Federal government. While assigned to a distinct territory by his/her regional manager, the journeyman investigator (1) plans work to provide a well-round liquor enforcement program; (2) maintains close working relationship with local law enforcement agencies and local liquor licensing authorities (city and county clerks offices); (3) receives, prioritizes and investigates complaints concerning liquor code violations; (4) files appropriate criminal and/or administrative charges against individuals and licensees found to be in violation of the liquor code; (5) conducts settlement meetings with liquor licensees and negotiates a settlement for approval by the Division Director and State Licensing Authority; (6) plans, organizes and directs special enforcement operations within his/her territory and directs the work of other investigators; (7) conducts inspections of liquor licensed premises; (8) provides training classes, public information or assistance and develops training pamphlets; (9) establishes his/her weekly work schedule (i.e., inspections, investigations, night enforcement activities or undercover work, conducting training classes) which is subject to review and alteration by the regional manager to meet regional work production or statewide liquor enforcement program needs; (10) debriefs regional manager on weekly accomplishments and upcoming work plans; (11) prepares monthly reports concerning his/her production for review by the regional manager; and (12) is paid a monthly salary that ranges between \$3,600

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1998 WL 852783  
1998 WL 852783 (DOL WAGE-HOUR)

Page 2

and \$4,500.

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 this section, an employee must meet all of the tests relating to duties, responsibilities, and salary that are contained in the appropriate section of the Regulations, 29 CFR Part 541. 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.

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 is office or nonmanual work directly related to the management policies or general business operations of his/her employer (or the employer's customers) that includes work requiring the exercise of discretion and independent judgment. See §541.2 of the Regulations. Activities contemplated by §541.2 of the Regulations as being "directly related to management policies or general business operations" of an employer are those related to the administrative operations of the 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 the 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 in carrying out the executive or administrative function of that official. In general, "administrative employee" means a person who is engaged in staff function as opposed to the line functions of an employer. See §541.205 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 professional employee if the employee's primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, and whose work requires the consistent exercise of discretion and judgment in its performance. See §541.3 of the Regulations.

Based on the information provided, it appears that the journeyman investigators' primary duty involves the day-to-day "production" functions of the employer rather than the management policies or general business operations of the employer. Where an employee's primary duty consists of such nonexempt work, the employee would not qualify as a bona fide administrative employee under §541.2 of the Regulations.

With regard to the professional exemption, it should be noted that the term "professional" as used in §541.3(a)(1) of the Regulations, has reference to those professions which have a recognized status and which are based on the acquirement of professional knowledge through a prolonged course of study. Although the journeyman investigator may have a college degree and/or special training and experience in his or her field, the duties and responsibilities of these employees

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1998 WL 852783  
1998 WL 852783 (DOL WAGE-HOUR)

Page 3

indicate that the job does not require "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study..." within the contemplation of §541.301 of the Regulations. Therefore, it is our opinion that the journeyman investigator would not qualify for the professional exemption.

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. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Daniel F. Sweeney

Office of Enforcement Policy Fair Labor Standards Team

1998 WL 852783 (DOL WAGE-HOUR)

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