

FLSA-1349

February 15 1994 (est.)

This is in response to your letter of June 16, 1993, concerning the application of the minimum wage and overtime pay exemption contained in section 13(a)(1) of the Fair Labor Standards Act (FLSA).

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, or professional capacity, as those terms are defined in Regulations, 29 CFR Part 541. An employee may qualify for exemption if all the pertinent tests relating to duties, responsibilities and salary, as discussed in the appropriate section of the Regulations, are met. One such test requires that a bona fide exempt employee be paid "on a salary basis," as discussed in section 541.118 of the Regulations.

You state that you represent a client that employs employees who meet all the tests for exemption contained in the Regulations. Due to financial and other business problems related to declining sales and a reduced rate of production, your client must reduce its labor costs. You ask the following questions with regard to the client's exempt employees.

Q.1 Can you client proportionally reduce the salaries of its exempt employees to reflect a shortened workweek, and still be considered to be paid on a "salary basis" as required by section 541.118 of the Regulations?

A.1 Section 541.118 does not preclude a bona fide reduction in an employee's salary which is not designed to circumvent the salary basis requirement. A reduction in salary resulting from a reduction in the normal workweek such as you describe is, therefore, permissible and will not defeat an otherwise valid exemption, provided that the reduction does not reduce the amount paid to the employee in any workweek to less than the minimum salaries required by the Regulations.

Q.2 Is the answer to question number 1 affected by how long or how often the employer reduces the workweek and correspondingly reduces the salaries of the exempt employees?

A.2 Generally, the answer to question number 1 is not affected by how long or how often the employer reduces the workweek and correspondingly reduces the salaries of the exempt employees, provided the reasons for such reductions and the amounts of the reductions are as you state in your correspondence. However, if the variations in the employees' work schedules occur so often that it appears that the employees are being paid by the day and not on a salary basis we would conclude that there was no intent to pay the employees a bona fide salary and we would deny the exemption in all workweeks when it was claimed.

Q.3 Can your client because of declining sales and a reduced rate of production select specified dates for a shutdown of its entire facility (e.g., the Friday before the Labor Day weekend or Thanksgiving or Christmas week) and require its exempt employees to take vacations during the shutdown period?

A.3 As long as your client's exempt employees receive their full guaranteed salaries in any workweek when they perform any work, they will be considered to be paid on a salary basis. It does not matter if part of the salary is attributable to vacation pay. Therefore, under the conditions you describe, an employer may require the exempt employees to take vacation time during a shutdown period.

Q.4 How long and how often may your client shut down its facility without violating the salary basis test with regard to exempt employees who would be required to take vacation time?

A.4 As long as vacation time was available to the exempt employees there would be no limitation as to how long and how often your client could shut down its facility.

We trust that the above satisfactorily responds to your inquiry.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

FLSA-1304

April 6, 1995

This is in response to your letter concerning an opinion you received from our Regional Administrator in San Francisco concerning the “salary basis” requirement under the white collar exemptions. At issue is whether an employer may make deductions from an exempt employee’s leave bank for days when the employee is instructed by the employer not to report to work because of budgetary constraints. You state that under no circumstances will an exempt employee’s weekly salary be reduced because of such deductions from his or her leave bank.

It is our opinion that the requirement that an exempt white collar employee be paid on a “salary basis” will be met under the circumstances described above. We trust that this satisfactorily responds to your inquiry.

Sincerely,

Maria Echaveste
Administrator
