

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON, D.C. 20210

APR 10 1970

MWES

13(a)(1) Exemption

21 BA 822
21 BA 841
21 BA 300

This is in further reply to your letter of February 19, 1970, in which you ask if the manager of a body shop in a retail automobile dealership is exempt as an executive employee under section 13(a)(1) of the Fair Labor Standards Act.

Section 13(a)(1) of the act provides a complete minimum wage and over-time pay exemption for an employee employed in a bona fide executive, administrative, or professional capacity, as defined in Regulations, Part 541. An employee will qualify for exemption as a bona fide executive employee if he meets all the pertinent tests relating to duties, responsibilities, and salary contained in section 541.1 of the regulations. Please note the new salary requirements for exemption in WEPC Publication 1227A, which became effective March 15, 1970.

In order for us to determine whether or not the employee you describe qualifies for exemption as a bona fide executive employee, we would need to know more exactly the percentage of time spent on each of various types of work. A bona fide executive employee of a retail or service establishment who meets the basic salary test for exemption must spend at least 60 percent of his time in exempt supervisory or other management type work. The following information may assist you in making your own determination in this matter.

It is reasonably clear that the time spent by the body shop manager inspecting and road testing of cars would not qualify as exempt work. In addition, the estimating of man-hour requirements for the completion of job assignments would be nonexempt work if based on standardized time estimates such as those contained in certain repair manuals. On the other hand, such work may qualify as exempt type work, if it is based on the manager's own knowledge of the technical skills and abilities of his employees. Although the manager's dealings with

claim adjustors and insurance appraisers may be executive type work, such work more clearly resembles exempt administrative type work under section 541.2 of the regulations. In this regard you may be interested in section 541.600 of the regulations which permits the "tacking" of exempt work under one section of the regulations to exempt work under another.

If after reading the enclosed materials you find that you still are unable to definitely determine whether the employee you have in mind meets all the tests for exemption under section 13(a)(1) of the Fair Labor Standards Act, it is suggested that you get in touch with our Area Office at 222 Klondike Building, 1813 Main Street, Columbia, South Carolina 29201, Telephone number: 803-253-8371 Ext. 423, and furnish them with the necessary additional information. That office is in a better position to offer every possible assistance.

Sincerely,

Robert D. Moran
Administrator by Ben P. Robertson
Deputy Administrator

4 Enclosures