

**FLSA-1007**

June 27, 1973

This is in further reference to your letter of May 21, 1973, concerning the "professional" status of "fashion artists" under Section 13(a)(1) of the Fair Labor Standards Act.

The basic requirements for the "professional" exemption are contained in Section 541.3 of the Regulations, Part 541, and subsequent Sections 541.300 through 541.315 which provide the explanatory material and interpretations relating to the basic requirements of the exemption.

Your letter indicates that the content of the job as a whole includes the following: producing drawings and illustrations by use of the actual material or merchandise, giving background, body, shape, form and color to said drawing, or by producing drawings from flat illustrations (photographs) of the actual merchandise. Your letter further states that these "artists" are paid within the monetary requirements of the "long test".

✉ It is not clear as to exactly how and in what amounts these employees are compensated. However, even if they are paid a salary of at least \$200 a week, thereby relieving the employee from meeting the percentage (20%) limitation on nonexempt work (541.3(d)) stipulated under the regular minimum salary requirements, the employee's "primary duty" must be the type of work that is "original" and "creative" and such that the results are dependent primarily on the "invention", "imagination" or talent of the employee. Based on the information furnished concerning the overall job descriptions (and not as it may relate to any particular employee), it would appear that the work generally described does not meet the requirements for exemption, i.e., work of the type that is predominately original and creative in character depending primarily on the invention and imagination of the individual. For example, the drawing or reproduction from a flat illustration (photograph) would not appear to meet these prerequisites, notwithstanding the fact that the employees may well possess the talent and training for original artistic productions.

While we do not feel that the work described as such would be exempt "professional" work under Section 13(a)(1), should you desire to submit further information, such as copies of the finished product (drawing or illustration) along with details as to how and in what amounts these employees are paid, we shall be pleased to give further consideration to the matter.

Sincerely,

Joseph P. McAuliffe, Chief  
Division of Minimum Wage  
and Hour Standards  
Wage and Hour Division

Enclosure

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✉ The salary amounts for the "short" and "long" test have been increased.