

FLSA-1018

September 27, 1979

This is in further reply to your letter of July 12, 1979, addressed to our Area Office in *** , concerning the exempt status under section 13(a)(1) of the Fair Labor Standards Act of paralegal employees employed by your organization in *** .

The specific duties of the paralegal employees (all of which occur under an attorney's supervision) are interviewing clients, identifying and refining problems; opening, maintaining, and closing case files, acting as the liaison person between client and attorney; drafting pleadings and petitions, and answering petitions, and interrogatories, filing pleadings and petitions; acting as general litigation assistant during court proceedings; digesting depositions, and preparing file profiles; conducting formal and informal hearings and negotiations; preparing and editing newsletters and leaflets for community development and public relations purposes; performing outreach services; coordinating general activities with relevant local, State, and Federal agencies, assisting in establishing and implementing community legal education programs; and working as a team with other employees to deliver quality legal services. You state that the job requires at least two years of college and/or equivalent experience.

Section 13(a)(1) of the Act 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, Part 541, a copy of which is enclosed. An employee will 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. In response to your first question, the paralegal employees you have in mind would not qualify for exemption as bona fide professional employees as discussed in section 541.3 of the regulations, since it is clear that their primary duty does not consist 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.

With regard to the status of the paralegal employees as bona fide administrative employees, it is our opinion that their duties do not involve the exercise of discretion and independent judgment of the type required by section 541.2(b) of the regulations. The outline of their duties which you submit actually describes the use of skills rather than discretion and independent judgment.

Under section 541.207 of the regulations, this requirement is interpreted as involving the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. Furthermore, the term is interpreted to mean that the person has the authority or power to make an independent

choice, free from immediate direction or supervision with respect to matters of significance.

The general facts presented about the employees here tend to indicate that they do not meet these criteria. Rather, as indicated above, they would appear to fit more appropriately into the category of employees who apply particular skills and knowledge in preparing assignments. Employees who merely apply knowledge in following prescribed procedures or determining whether specified standards have been met are not deemed to be exercising independent judgment, even if they have some leeway in reaching a conclusion. In addition, it should be noted that most jurisdictions have strict prohibitions against the unauthorized practice of law by lay persons. Under the American Bar Association's Code of Professional Responsibility, a delegation of legal tasks to a lay person is proper only if the lawyer maintains a direct relationship with the client, supervises the delegated work and has complete professional responsibility for the work produced. The implication of such structures is that the paralegal employees you describe would probably not have the amount of authority to exercise independent judgments with regard to legal matters necessary to bring them within the administrative exemption.

There is not enough information in question 3 of your letter concerning the additional duties performed by the paralegal employees in the absence of the executive director, or when acting as assistant executive director to make a determination concerning the application of the administrative exemption. However, the discussion contained in sections 541.201 through 541.215 of the regulations should provide guidance to you on this matter.

With regard to your fourth and fifth questions, all nonexempt employees, regardless of the amount of their wages, must be paid overtime premium pay of not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek. The fact that an employee did not obtain advanced approval to work the overtime does not relieve the employer from complying with the overtime provisions of the Act.

We hope this satisfactorily responds to your inquiry. However, if you have any further questions concerning the application of the Fair Labor Standards Act to the situation you have in mind, please do not hesitate to let us know.

Sincerely,

Herbert J. Cohen
Assistant Administrator
Wage and Hour Division

C. Lamar Johnson
Deputy Administrator

Enclosure