

## FLSA-58

November 29, 1979

This is in reply to your letter of October 2, 1979, in which you ask if paralegal employees of your organization, the \*\*\* Legal Services in \*\*\*, must be paid overtime premium pay. You state that Legal Services is a nonprofit corporation providing free legal services to low income individuals.

The Fair Labor Standards Act is the Federal minimum wage and overtime pay law. It applies to employees individually engaged in or producing goods for interstate commerce and to employees in certain enterprises. Employees of organizations such as the ones you have in mind who regularly order or receive goods or materials from outside the State or who regularly communicate across State lines by telephone, telegraph or the mail are individually covered under the law, and are entitled to a minimum wage of \$2.90 an hour and overtime premium pay for all hours worked over 40 in a workweek, unless specifically exempt.

Enterprise coverage under section 3(s)(1) of the Act would apply to enterprises that have employees engaged in commerce or in the production of goods for commerce, or employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and the enterprise has an annual dollar volume of sales made or business done of not less than \$250,000 exclusive of excise taxes at the retail level which are separately stated. The dollar volume that is attributable to educational, eleemosynary, and religious activities of a nonprofit organization is not included in determining whether or not the annual volume test discussed above is met, since such activities are not considered to be performed for a business purpose. Please note that even though enterprise provisions under section 3(s)(1) of the Act may not apply to some nonprofit enterprises, employees may be covered on an individual basis and subject to the Act's monetary provisions if they are individually engaged in or producing goods for interstate commerce, as discussed in the second paragraph above.

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. 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.

The granting of compensatory time off in lieu of receiving overtime pay for overtime hours worked will not satisfy the requirements of the Act for employees who are covered and not otherwise exempt from its monetary provisions. It is the Department's position that an employer may not credit an employee with compensatory time (even at a time and one-half rate) for overtime earned which is to be taken at some mutually agreed date subsequent to the end of the pay period in which the overtime was earned.

If after reading the enclosed material you have any further questions concerning this matter it is suggested that you get in touch with our Area Office at \*\*\*. That office is responsible for the administration of the Fair Labor Standards Act in your area and will be pleased to offer every possible assistance.

Sincerely,

Daniel P. New, Director,  
Division of Minimum Wage  
and Hour Standards

Enclosure