

FLSA-297

April 21, 1982

This is in reply to your letter of April 3, 1982, requesting an opinion as to whether clinical dieticians of a hospital may be exempt under 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, professional, or outside sales capacity, as those terms are defined and delimited in Regulations, 29 CFR Part 541 (copy enclosed). An employee will qualify for exemption if all the pertinent tests relating to duties, responsibilities, and salary, as discussed in the regulations, are met.

Your letter indicates that the dieticians have bachelor's degrees in dietetics, nutrition, or medical dietetics and are registered with the American Dietetic Association after serving an additional year as an intern. You also indicate that they have nutritionists and clerks working for them. According to the job description you have enclosed it appears that the dietitian's primary duty is the planning and development of patient diets and the education of patients in their nutritional needs. Presumably such planning is in accordance with the orders given by the attending physician, and the diets planned meet the physicians' limitations. The job description indicates that the dietitian reports to the Coordinator of Nutritional Services.

Based upon the duties and responsibilities described in your letter, it is our position that the clinical dietitian cannot be properly classified as a bona fide professional employee, as that term is defined in 29 CFR Part 541.

Although there is not enough information in your letter for us to make a definite determination concerning the exempt status of the clinical dietitian as a bona fide administrative employee, the following should be of assistance to you. It is our opinion that such an employee may qualify for exemption as a bona fide administrative employee if all the pertinent tests relating to duties, responsibilities and salary, as described in section 541.2 of the regulations, are met. One such test requires that the employee customarily and regularly exercise "discretion and independent judgment" in the performance of his or her duties.

The term "discretion and independent judgment" implies that the person in question has the authority or power to make independent choices, free from immediate direction or supervision, and with respect to matter of significance. In your case if the amount of direction and supervision received by the dietitian from the physician or the coordinator of nutritional services is so close that the employee is not able to use discretion and independent judgement in the preparation of the patient's menu, and in the choice of foods to be prepared; or if the dietitian is merely applying knowledge in prescribed techniques, procedures and specified standard found in standardized charts and various other publications, the employee would not be using discretion and independent judgment. Of course, the exempt status of the dietitian you have in mind would depend on the actual facts in his or her case, and not on a job title or job description.

While your letter indicates that the dietitians have employees working for them, it does not appear from the information available that the dietitians have management as their primary duty so as to qualify as bona fide executive employees within the meaning of the regulations. Neither does your letter indicate that the tests for executive exemption contained in section 541.1 (c) through (f) are

met.

We trust that the above has satisfactorily responded to your inquiry. Please let us know if you have further questions.

Sincerely,

William M. Otter
Administrator

Enclosure