

FLSA-328

January 13, 1983

This is in reply to your letter of December 24, 1982, concerning the salary basis of payment requirement under section 13(a)(1) of the Fair Labor Standards Act (FLSA).

Your letter describes a proposed compensation plan your client wishes to adopt for certain professionals. Your letter asks us to presume that all other requirements for the professional exemption in section 541.3 of Regulations, 29 CFR Part 541 are met.

Your client's professionals would be guaranteed a salary of \$500 per week, and in addition, \$10 to \$15 per hour extra pay for work performed over 40 hours in one workweek, or after 80 hours in a two-week period, or even after 160 hours in a month. If the professional works less than 40 hours in a workweek, such employee will receive the full salary of \$500. Your client intends to take the permissible deductions from the professional's salaries as provided in section 541.118(a)(2) - (5) of 29 CFR Part 541.

We agree with your conclusion that the extra compensation that your client proposes to pay in addition to the salary is not inconsistent with the salary basis of payment and is in accordance with section 541.118(b). Further, we believe that your client's proposed compensation plan generally appears to meet the requirements in section 541.118.

However, we have some reservations concerning the provisions in the "Compensation Agreement" allowing the employer to adjust the salary and extra compensation as determined by the employer. If, for example, such proviso were used to make frequent adjustments in compensation, it would raise a serious question as to whether these professionals were being paid "on a salary basis" within the meaning of the Regulations.

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

Sincerely,

James L. Valin
Assistant Administrator
Wage and Hour Division

William M. Otter
Administrator