

April 13, 1983

This is in reply to your letter of March 22, 1983, requesting an opinion as to the exempt status of an electronic designer under section 13(a)(1) of the Fair Labor Standards Act (FLSA).

According to the job description you furnished, the electronic designer works within the drafting department of a firm to guide the drafting activities and procedures necessary for the design and manufacturing of printed circuit boards. The designer works with engineering and manufacturing personnel to develop the designs and manufacturing specifications for the circuit boards. (S)he takes the commercial specifications and standards and translates the design information into printed circuit board designs. The designer may make improvement recommendations to the supervisor based upon study of the manufacturing processes, and by searching out new state-of-the-art concepts. Also, the designer determines if automated drafting techniques can be used on current circuit card scheduling. Finally, the electronic designer troubleshoots unique printed circuit layouts under established ground rules. The electronic designer is paid a salary ranging from \$20,654 to \$31,106 per year.

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, professional, or outside sales capacity. The requirements for exemption are contained in Regulations, Part 541, a copy of which is enclosed. An employee may 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.

It is clear from the information provided that the electronic designer would not qualify for exemption as a bona fide executive employee since his/her primary duty does not consist of the management of the enterprise in which (s)he is employed, as required by section 541.1(a) of the regulations. Also, it is evident that this employee would not qualify for exemption as a bona fide professional employee, since the employee's primary duty does not consist of the performance 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 required by section 541.3(a)(1) of the regulations.

The work of the designer does not appear to be original since the designer produces drafting that carries out the work of engineering personnel. A person whose job it is to draft the ideas or designs of others is best characterized as a drafter, and not one who is a professional within the meaning of the regulations. Drafting done in connection with the professional work of someone else is nonexempt work. See section 541.308.

We have also considered the exempt status of the designer under the administrative exemption in section 541.2 of the regulations. One test in section 541.2(e)(2) requires that such an employee exercise discretion and independent judgment. An employee who merely applies his/her knowledge in following prescribed procedures or determining which procedure to follow, or who determines whether specified standards are met or

whether an object falls into on or another of a number of definite grades, class, or other categories is not using discretion and independent judgement within the meaning of section 541.2.

The employee must exercise authority independently making decisions upon matters of significance which commit the employer in substantial respects, financially or otherwise. The employee's duties must include work which requires the exercise of discretion and independent judgment in making real decisions in significant matters. See section 541.207. We note that decisions on improvement recommendations suggested by the designer appear to rest with the designer's supervisor. Thus, based upon the information you have furnished, we conclude that the electronic designer cannot qualify for exemption under section 13(a)(1) of the FLSA.

Please let us know if you have further questions.

Sincerely,

William M. Otter
Administrator

Enclosures