

**FLSA-398**

( April 4, 1984

This is in reply to your letter of February 15 requesting an opinion as to whether customer service technicians are administrative employees within the meaning of section 13(a)(1) of the Fair Labor Standards Act (FLSA) and Regulations, 29 CFR Part 541.

You indicate that the customer service technicians are employed by a manufacturer of electronic equipment and machinery. They are responsible for assisting distributors and/or purchasers in the operation and maintenance of the equipment manufactured by their employer. Their duties include training distributors or customers in using and operating the equipment, including conducting classroom and laboratory segments of training programs.

The customer service technicians also travel to the customer's facilities to oversee the proper installation of the equipment and/or repair of the equipment. They also develop standard troubleshooting and diagnostic procedures to solve problems encountered by the customer and for use in equipment repair. Where a customer's employees cannot resolve the problem, the customer service technicians personally examine the equipment, diagnose the problem, and repair the equipment. They also make recommendations to their employer's engineers concerning product modifications and improvements or problems encountered with the equipment.

( Customer service technicians may make minor warranty decisions and minor purchases for demonstrator vehicles without obtaining supervisory approval. However, major warranty decisions and purchase approvals are referred to their supervisor or higher management for determination. You feel that the customer service technicians use judgment in evaluating engineering problems and in their recommendations on such matters to their employer's engineering and design personnel. You also feel that judgment is exercised in preparing and conducting training seminars and in determining the appropriate diagnostic or corrective procedure.

You indicate that customer service technicians are supervised by the employer's service manager. The service manager has authority to make warranty decisions concerning matters of supplies and services under \$500.

Customer service technicians should have a technical understanding of electronics, mechanics, and/or metallurgy, which may be obtained through academic training in electronics or industrial equipment maintenance and/or experience. We also understand that the employees in question are paid on a salary basis which is in excess of \$250 per week.

In determining whether or not an employee is exempt under section 13(a)(1) of FLSA as a bona fide administrative employee, all tests relating to duties, responsibilities, and salary in section 541.2 of the regulations must be met. One crucial test under the special provision in section 541.2(e)(2) (so-called "short" test) requires that such an employee exercise discretion and independent judgment.

( Whether customer service technicians exercise discretion and independent judgment within the meaning of section 541.207 is a factual matter. If in the course of their duties, they exercise authority in independently making decisions upon matters of significance which commit the employer in substantial respects financially or otherwise, they would be exercising discretion and independent judgment. The employee's duties must include work which requires the exercise of discretion and independent judgment in making real decisions in significant matters.

On the other hand, 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 one or another of a number of definite grades, classes, or other categories, with or without the use of testing or measuring devices, is not exercising discretion and independent judgment within the meaning of section 541.2. This is true even if there is some leeway in reaching a conclusion, as when an acceptable standard includes a range or tolerance above or below a specific standard. See section 541.207(c).

It has been our long-standing position that service employees and repair technicians like the customer service technicians you have in mind do not qualify for exemption as bona fide administrative employees. Work which consists of the performance of installation, diagnosis, repair, and/or operation of electronic or industrial equipment does not involve the use of discretion and independent judgment within the meaning of the regulations. The fact that the customer service technicians may demonstrate such techniques to distributors or customers of the manufacturer does not change this conclusion. Such employees are using skills and procedures or techniques acquired by special training or experience. Their duties do not involve, with respect to matters of significance, the comparison and evaluation of possible courses of conduct and the making of decisions after the various possibilities have been considered. It is our opinion that the customer service technicians are best characterized as highly skilled technicians who are nonexempt under section 13(a) (1).

We hope the above is responsive to your inquiry. Please let us know if you have further questions.

Sincerely,

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Administrator