

APR 23 1984

This is in reply to your letter of February 16 requesting an opinion as to whether paralegal employees qualify as bona fide professional employees who are exempt under section 13(a)(1) of the Fair Labor Standards Act (FLSA) and Regulations, 29 CFR Part 541.

You indicate that the paralegal employees are paid over \$250 per week and that each employee works under the supervision of an attorney. The paralegal employees perform such duties as: drafting wills, pleadings, memoranda, and other papers; sitting in on sessions when witnesses are deposed; assisting attorneys with review and collating of documents identified during deposition; and participating in real estate closing and meetings with clients. Some may prepare tax protests and/or tax returns, conduct research into issues, and participate in appellate conferences under the supervision of an attorney. Some become involved in incorporations, including the preparation of articles of incorporation, initial shareholder and director's meeting minutes, and bylaws. Some may conduct interviews with potential witnesses in litigation cases. Each paralegal employee performs legal research tasks and prepares legal memoranda to attorneys concerning this research. The paralegals also assist attorneys in courtroom hearings and trials, but take no part in examining witnesses or arguing motions at trial. In addition, they supervise clerical staff. The educational background required for your firm's paralegals is graduation from an accredited paralegal program such as the one conducted by [REDACTED] (which offers an AA degree) or the [REDACTED]. In addition, you indicate that your tax paralegals all have bachelors degrees and lengthy experience with IRS.

Section 13(a)(1) of 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 in Regulations, 29 CFR Part 541. An employee will qualify for exemption if all the pertinent tests relating to duties, responsibilities, and salary, as discussed in the appropriate sections of the regulations, are met. One such test, as set out in section 541.3(a)(1), requires that such an employee perform work which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

A "prolonged course of . . . study" has generally be defined to mean at least a baccalaureate degree or equivalent which includes a longer intellectual discipline in a particular course of study as distinguished from a general academic course otherwise required for a baccalaureate degree. In our opinion, the paralegal employees you have in mind would not qualify for exemption as bona fide professional employees within the meaning of section 13(a)(1) 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.

The information you have provided indicates that, except for tax paralegals, employees with training at a level under a baccalaureate degree perform the paralegal tasks. Work which can be performed by employees with education and training which is less than a bachelor's degree would not be work of a bona fide professional level within the meaning of the regulations. We believe that most paralegal work involves the use of skills and procedures which do not require four years of college or university training to obtain a degree in a professional discipline. The information provided suggests that the paralegals are best characterized as highly skilled, nonexempt technicians.

You have not provided any information which shows that tax paralegal work requires a bachelor's degree. If the tax paralegal work can be performed by employees with less than a bachelor's degree, such work would not be of a bona fide professional level within the meaning of the regulations.

While you also indicate that the paralegals supervise clerical staff and have a secretary reporting to them, such duties are not a factor in determining the application of the professional exemption. Supervision of two or more employees is one of the factors required for exemption under section 541.1 as a bona fide executive employee. However, you have not provided any information on the paralegals which suggests that their primary duty consists of management of the enterprise in which they are employed, or of a customarily recognized department or subdivision thereof. See sections 541.1(f) and 541.103.

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

Sincerely,

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Administrator