

FLSA-323

July 20, 1984

This is in further response to your April 27 request for an opinion concerning the applicability of section 13(a)(1) of the Fair Labor Standards Act (FLSA) to account executives in an advertising firm.

You indicate that the account executives spend all of their time handling client advertisement campaigns and are paid salaries of at least \$250 a week. They work independently under general supervision. The account executives must possess specialized training in the recruitment industry and work directly with clients in creating employment advertisements and recruiting campaigns to meet each client's needs.

The account executives write and design the clients' employment advertisements. They consult with artists when creative art work, such as graphics, is used in recruitment advertisement and review and approve or reject the graphics prior to submitting the advertisement to the client.

Once the advertisement is approved by the client, the account executives review all art and written work prior to sending the advertisement to the advertising firm's shipping department for release to newspapers and periodicals. The account executives ensure that the advertisements are published in periodicals according to client deadlines.

In addition, the account executives work with clients in creating other advertising material including client brochures, which are distributed to the clients' customers, potential customers, and employees.

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, or professional capacity, as the terms are defined in 29 CFR Part 541. An employee will qualify for exemption as a bona fide administrative employee if all of the tests relating to duties, responsibilities, and salary are met, as discussed in Section 541.2 of the regulations.

It appears from the information contained in your letter that the account executives are performing special assignments under general supervision, as discussed in section 541.2(c)(3) and 541.201(a)(3)(ii), and are engaged in the performance of work directly related to management policies or general business operations as discussed in section 541.2(a)(1) and 541.205(c)(5). Therefore, it is our opinion that the account executives are exempt as bona fide administrative employees provided they customarily and regularly exercise discretion and independent judgment as defined in 541.207. This requirement would be met if the employees are regularly involved in reviewing and approving or rejecting the work of the art department.

We wish to point out that this opinion is based on the facts as presented in your letter. We trust the above, is responsive to your inquiry.

Sincerely,

William M. Otter
Administrator