



January 7, 2005

FLSA2005-2

Dear **Name***,

This is in response to your request for an opinion concerning the application of the administrative exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA) to junior-level claims adjusters **Name*** and **Name*** employed by the **Name***. You request us to confirm your determination that both positions do not qualify for the administrative exemption under the FLSA regulations, 29 CFR Part 541.

Please note that the Department of Labor issued revisions to 29 CFR Part 541, effective August 23, 2004. See 69 FR 22122. The updated Part 541 regulations apply prospectively, beginning on August 23, 2004. Our response is applicable under these updated regulations, which clarify but make no substantive changes in the primary duty test requirements for the administrative exemption.

The **Name*** self-insures for purposes of workers' compensation coverage for its employees. The **Name*** is the state agency responsible for administering the state employees' workers' compensation program. The junior-level claims adjusters at issue are currently considered by the Office as not meeting the administrative exemption criteria, and are thus eligible for overtime pay. We assume, for discussion purposes, that the junior-level claims adjusters meet the salary level and salary basis requirements under the updated regulations.

You state that the junior-level claims adjusters' work constitutes the day-to-day carrying out of the business affairs of the Office and that these adjusters are not involved in determining the overall course or policies of the Office or in running the business of the Office. The vast majority of the junior-level claims adjusters' work consists of conducting telephone interviews from a list of prepared questions in order to determine whether to accept or deny a workers' compensation claim for benefits, and filling out pre-printed forms needed to make or deny payments. You state that their claim form processing duties involve the routine, recurrent and repetitive tasks of collecting information usually obtained by telephone and from submitted documents. Completion of these forms requires only the level of skill needed to apply well-established techniques, procedures or specific standards usually described on the face of the forms. The junior level claims adjusters do not perform investigations in person and never visit the scene of an accident.

In terms of the exercise of discretion and independent judgment criteria, you state that junior-level claims adjusters may only make payments to claimants and health care providers when such payments are clearly appropriate and not scheduled for dispute resolution. If questions arise as to the appropriateness of payments, junior-level claims adjusters must receive approval either from their supervisors or from the General Counsel's office. All discretion exercised by junior-level claims adjusters is circumscribed by, and in accordance with, established policies. They do not review policies to determine whether there is coverage as all state employees serviced by the Office are covered. They also do not make determinations as to questions of liability, percentages of comparative fault, and negligence. Questions of third party liability or subrogation are handled by either the General Counsel or the Office of the Attorney General.

The junior-level claims adjusters may only approve a payment of indemnity benefits to a claimant without supervisory approval if the payment is under \$1,500 and when these benefits are clearly appropriate based on their investigation of the facts. All medical benefits must be pre-authorized by an outside contractor for payments exceeding \$500 before any adjuster may pay them. Indemnity benefits are based on established statutory formulas, and medical payments are based on statutory fee guidelines.

The junior-level claims adjusters have no authority to negotiate or make settlements of disputed claims. All claims-related negotiations are handled by supervising claims adjusters and other individuals. Junior-level claims adjusters do not perform any investigation related duties such as on-site visits, inspection of damages, and taking of photos. The **Name*** position, according to the job description you submitted, has



“limited latitude” for independent judgment in accordance with established policies, while the position has “some latitude.”

Under the updated regulations at 29 CFR 541.200, the term “employee employed in a bona fide administrative capacity” in Section 13(a)(1) of the FLSA means any employee:

- 1) compensated on a salary or fee basis at a rate of at least \$455 per week;
- 2) whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- 3) whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Section 541.201(a) of the updated rule explains that to meet the “directly related to the management or general business operations” requirement, “an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.”

Section 541.202(a) states that “[i]n general, the exercise of discretion and independent judgment involves the comparison and evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered.” The requirement “implies that the employee has authority to make an independent choice, free from immediate direction or supervision.” 29 CFR 541.202(c). Section 541.202(a) explains that the “matters of significance” requirement “refers to the level of importance or consequence of the work performed.” Section 541.202(e) further clarifies that the “exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.”

Section 541.203(a) of the updated rule provides that insurance claims adjusters “generally meet the duties requirements for the administrative exemption, whether they work for an insurance company or other type of business, if their duties include activities such as interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.”

This section reflects the factors that courts have considered in assessing whether an employee is engaged in administrative servicing of a business and whether the employee exercises the requisite discretion and independent judgment. See 69 Fed. Reg. 22,122, 22,144-45 (April 23, 2004) (preamble to the updated rule). Thus, section 541.203(a) simply provides an illustration of the application of the administrative duties test; it does not provide a blanket exemption for claims adjusters. As section 541.2 of the new rule explains, “[t]he exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee’s salary and duties meet the requirements in this part.” Also, as emphasized in the preamble discussion on section 541.203(a), “there must be a case-by-case assessment to determine whether the employee’s duties meet the requirement for exemption.” 69 Fed. Reg. at 22,144. See also Robinson-Smith v. GEICO, 323 F. Supp.2d 12, 26 (D.D.C. 2004) (concluding that the criteria for the administrative exemption are essentially the same under the previous and current final regulations, and that under the previous regulations GEICO’s auto damage adjusters did not satisfy the “discretion and independent judgment” test because “the vast majority of the adjusters’ work consists of using their training and skills to assess the value of damage to the vehicle in accordance with [GEICO’s] standards”); McLaughlin v. Nationwide Mutual Insurance Co., 2004 WL 18557112 (D. Ore. 2004) (concluding that the criteria for the administrative exemption are essentially the same under the previous and the current regulations, and that further evidence was necessary to evaluate whether these particular claims adjusters exercised the requisite discretion and independent judgment).

While you described that these junior-level claims adjusters’ activities are usually limited to collecting statements and documentation over the telephone from the claimant, employers, witnesses and health care providers, you note that they do not make determinations as to questions of coverage or liability, nor do they have any authority to negotiate or make settlements of disputed claims. They also do not make



recommendations regarding litigation. Indeed, the information you provided points out that they never conduct on-site investigations, never visit the scene of an event, nor do they inspect damage. They conduct their telephone interviews based on a list of standardized questions and simply enter responses onto forms. The junior-level claims adjusters do not evaluate the limited information gathered to determine the amount of the benefit payment. The payment amount is determined by inputting the limited information on a standardized form and applying set statutory formulas. Moreover, without higher level approval, the junior-level claims adjusters have very limited authority and can only make indemnity benefit payments under \$1,500 and medical benefit payments under \$500.

For these reasons we conclude that the primary duty of the *Name** employees is performing duties involving applying their particular skills and knowledge rather than exercising “discretion and independent judgment with respect to matters of significance.” Therefore, we agree with your determination that employees employed by the Office as junior-level claims adjusters do not qualify for the administrative exemption under the updated regulations at 29 CFR § 541.200. Hence, these junior-level claims adjusters are covered by the overtime and minimum wage provisions of the FLSA.

With regard to the second prong of the test, consideration of the nature of the “business,” or in this case, the function of the government agency in question, can be helpful in determining whether activities are “directly related to the management or general business operations” of the employer. Given the lack of the requisite discretion and independent judgment in matters of significance in this case, however, we need not consider the issue.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

Enclosures

*Note: * The actual name(s) was removed to preserve privacy.*