



**U.S. Department of Labor**  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

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**FLSA2009-6**

January 14, 2009

Dear **Name\***:

This is in response to your request for an opinion regarding the status of your client's eight full-time pilots under the Fair Labor Standards Act (FLSA). You ask whether the pilots are exempt under the learned professional exemption set out in [29 C.F.R. § 541.301](#).\*

Section 13(a)(1) of the FLSA provides a complete exemption from the minimum wage and overtime pay requirements for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 C.F.R. Part 541. An employee may qualify for exemption if all of the pertinent regulatory tests are met relating to job duties, salary level, and compensation on a salary basis as discussed in the regulations.

Your client employs eight full-time pilots to service and fly its two jet aircrafts (a Gulf Stream and a Citation-Excel) and one helicopter (medium Sikorski S76A). The eight pilots are responsible for transporting the Company's executives, customers and guests as needed, for sales support and to board meetings and operation facilities. The Chief Pilot and all of the Captains (pilots ## 1 – 7) hold FAA Airline Transport Pilot Certifications; all of the pilots (including the First Officer, pilot #8) hold commercial pilot licenses with instrument and multi-engine ratings and each one meets or exceeds the FAA's requirements to qualify as a pilot-in-command.

In addition, the Chief Pilot serves as the immediate supervisor of the other pilots and the flight attendants and serves on the department management team as the representative for the pilots and flight attendants. As a manager of the flight crews, the Chief Pilot also serves as the team leader, ensures that any issues with direct reports are solved in a timely and amicable way, and manages the crew members' flight scheduling, training, vacations, and unexpected personnel issues, e.g., sickness and crew rest/duty day concerns. The Chief Pilot (who also possesses a flight instructor rating) is also responsible for new pilot flight instruction. The base compensation for both the Chief Pilot and the Standards Captain is salaried in excess of \$100,000 per year (along with a 15 percent bonus). The five Captains Pilots receive base compensation of salaries in the mid- \$80,000 to \$90,000's per year, with a 15 percent bonus. The First Officer Pilot, who also is fully qualified under FAA standards to serve as a pilot-in-command for the client's jet aircrafts, but will not yet be assigned as pilot-in-command due to the

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\* Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at [www.wagehour.dol.gov](http://www.wagehour.dol.gov).

Company's more stringent training and experience requirements, receives base compensation in the \$70,000's with a 10 percent bonus.

Although you have not specifically referenced the executive exemption, that exemption may be relevant to your inquiry. The executive exemption is defined as any employee:

- (1) Compensated on a salary basis at a rate of not less than \$455 per week;
- (2) Whose primary duty is management of the enterprise or of a customarily recognized department or subdivision thereof;
- (3) Who customarily and regularly directs the work of two or more other employees; and
- (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

[29 C.F.R. § 541.100\(a\)\(1\) – \(4\).](#)

It is not apparent from your description whether the Chief Pilot's primary duty qualifies as "management . . . of a customarily recognized department or subdivision" of the employer's enterprise or department. "Primary duty" is defined in [29 C.F.R. § 541.700](#) as "the principal, main, major or most important duty that the employee performs." The amount of time spent performing exempt work can be a useful guide in determining the primary duty of an employee, but time alone is not the sole test. An employee who spends less than 50 percent of the time performing exempt managerial duties may still meet the primary duty requirement of the executive exemption if other factors support that conclusion, as discussed in [29 C.F.R. § 541.700\(b\)](#):

Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

[29 C.F.R. § 541.700\(a\).](#)

Whether the flight crew constitutes "a customarily recognized department or subdivision" within the employer's management operations is a question of fact. If the Chief Pilot is, in fact, actually in charge of managing a recognized unit with a permanent status and a continuing function in the employer's organization as discussed in [29 C.F.R. § 541.103](#) and otherwise meets the primary duty requirement of "management" (*see* [29 C.F.R. § 541.102](#)), the Chief Pilot may be eligible for the executive exemption. We also do not have sufficient information to determine if the Chief Pilot is an employee "[w]ho has the authority to hire or fire other employees or whose suggestions and recommendations as to

the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.” 29 C.F.R. §§ 541.100(a)(4) and [541.105](#). Only if the Chief Pilot in fact possesses such authority would the executive exemption apply.

To qualify for the learned professional exemption, an employee’s primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. *See* 29 C.F.R. § 541.301. The Department has taken the position that pilots are not exempt as learned professionals. We have maintained that aviation is not “a field of science or learning” and that the knowledge required to be a pilot is not “customarily acquired by a prolonged course of specialized intellectual instruction” within the meaning of the regulations. *See* 69 Fed. Reg. 22,122, 22,156 (April 23, 2004); Wage and Hour Opinion Letter FLSA-565 (Jan. 20, 1975) (copy enclosed).

The Wage and Hour Division, however, takes a position of non-enforcement with regard to pilots and copilots of airplanes and rotorcraft who hold an FAA Airline Transport Certificate or Commercial Certificate, and who receive compensation on a salary or fee basis at a rate of at least \$455 per week, and who are engaged in the following activities:

- (1) Flying of aircraft as business or company pilots;
- (2) Aerial mineral exploration;
- (3) Aerial mapping and photography;
- (4) Aerial forest fire protection;
- (5) Aerial meteorological research;
- (6) Test flights of aircraft in connection with engineering, production, or sale;
- (7) Aerial logging, fire suppression, forest fertilizing, forest seeding, forest spraying, and related activities involving precision flying over mountainous forest areas;
- (8) Flying activities in connection with transmission tower construction, transmission line construction, transportation of completed structures with precision setting of footings, concrete pouring; or
- (9) Aerial construction of sections of oil drilling rigs and pipe-lines, and ski-lift and fire lookout constructions.

*See* Wage and Hour Opinion Letter FLSA-505 (Feb. 7, 1992) (copy enclosed); Wage and Hour Opinion Letter FLSA-585 (Sept. 2, 1975) (copy enclosed); Wage and Hour Opinion Letter FLSA-565 (Jan. 20, 1975) (copy enclosed); Wage and Hour Opinion Letter FLSA-387 (May 25, 1971) (copy enclosed).

This non-enforcement position does not apply to airplane and helicopter pilots engaged in agricultural crop-dusting operations. This policy also does not relieve an employer from compliance with the minimum wage and overtime pay standards for support and maintenance personnel covered by the FLSA. In addition, this non-enforcement position does not apply to employees, including pilots and copilots, subject to the provisions of the McNamara-O’Hara Service Contract Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act, nor relieve any employer from any obligation

incurred under a collective bargaining agreement or any liability incurred in a private suit under section 16(b) of the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues 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 this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino  
Acting Administrator

**\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**