

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

TWO HEARINGS ON "EXECUTIVE" SCHEDULED

Two hearings on petitions to redefine "executive" and other terms used to describe employees exempt from minimum wage and maximum hour provisions of the Fair Labor Standards Act were scheduled today by Colonel Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

At the first hearing, testimony will be received on the working of the present regulation defining the exemption in banking, brokerage, insurance, financial and related industries. It will be held at 10:00 A.M. on July 9, at the New Willard Hotel, Washington, D. C. Harold Stein, Assistant Director of the Hearings Branch of the Division, will preside.

The second will include the publication, communication, public utilities, transportation and miscellaneous industries. It will be held at 10:00 A.M., July 25, 1940, at the New Willard Hotel, Washington, D. C. Mr. Stein will preside at the second hearing also.

Both hearings will deal with these exemptions written into Section 13(a)(1) of the Act -- "The provisions of sections 6 (minimum wages) and 7 (maximum hours) shall not apply with respect to any employee engaged in a bona fide executive, administrative, professional . . . capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator)."

The two hearings announced today will complete a series of hearings scheduled on this subject. Similar hearings were held in the wholesale distributive trades from April 10 to 16 and in the manufacturing and extractive industries from June 3 to 5, 1940. Any change in the present definitions of the terms "executive, administrative, professional" or "outside salesman" await the

termination of the two coming hearings.

The present definitions which are contained in Part 541 of the Regulations read as follows:

"Section 541.1 -- Executive and Administrative.

The term 'employee employed in a bona fide executive (and) administrative * * * capacity' in section 13(a)(1) of the Act shall mean any employee whose primary duty is the management of the establishment, or a customarily recognized department thereof, in which he is employed, and who customarily and regularly directs the work of other employees therein, and who has the authority to hire and fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and who customarily and regularly exercises discretionary powers, and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer, and who is compensated for his services at not less than \$30 (exclusive of board, lodging, or other facilities) for a workweek.

Section 541.2 -- Professional.

The term 'employee employed in a bona fide * * * professional * * * capacity' in section 13(a)(1) of the Act shall mean any employee --

(a) who is customarily and regularly engaged in work --

(i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work, and

(ii) requiring the consistent exercise of discretion and judgment both as to the manner and time of performance, as opposed to work subject to active direction and supervision, and

(iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and

(iv) based upon educational training in a specially organized body of knowledge as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual, mechanical, or physical processes in accordance with a previously indicated or standardized formula, plan or procedure, and

(b) who does no substantial amount of work of the same nature as that performed by nonexempt employees of the employer.

Section 541.4 -- Outside Salesman.

The term 'employee employed * * * in the capacity of outside salesman' in section 13(a)(1) of the Act shall mean any employee who customarily and regularly performs his work away from his employer's place or places of business, who is customarily and regularly engaged in making sales as defined in Section 3(k) of the Act and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer. For the purposes of this definition, recurrent routine deliveries, whether or not prior orders are placed by the purchasers, and collections, shall not be considered sales."

For the purpose of these hearings, the "banking, brokerage, insurance, financial and related institutions" shall include: "banks of all kinds; trust companies; commercial paper houses; agricultural, livestock, and production credit associations; finance, loan and mortgage companies; cotton factors; security, commodity, insurance, and foreign exchange brokers and dealers; investment trusts; oil and gas royalty companies; insurance companies; clearing house associations; stock and commodity exchanges; and related institutions."

The "publication, communication, public utility, transportation and miscellaneous industries" shall include "publication of books, magazines, and newspapers; radio and television broadcasting; telegraph, telephone, gas, electric, and water service; transportation; moving picture production; construction; and other industries not represented at previous hearings."

The formal notice of hearing (Federal Register June 21, 1940) states:

"Testimony offered in written statements or in personal appearances by witnesses in support of proposed amendments will have its usefulness increased if it includes as much of the following information as possible:

(a) The number of individuals or firms whom the witnesses represent. The number of employees in such firms.

(b) The number or percentage of persons in these firms exempt under present definitions.

(c) The number, or percentage, of persons in these firms not now exempt, whom it is desired to exempt by the proposed definition, together with their titles and places in an organization chart.

(d) The duties of such persons, with a rough percentage breakdown showing various types of work performed; what parts of the present definition they do not meet; also reasons why they should properly be classified as employed in an 'executive, administrative,' or 'professional' capacity or in the capacity of an 'outside salesman.'

(e) Normal low, high and average salary paid the employees listed in (b) and (c) above.

(f) Discussion of the ability of the proposed language to exempt only the employees listed in (c) above and not other employees as well."

Any person interested in proposing or opposing any amendment to the regulations and wishing to be heard at the July 9 hearing should file not later than July 6, 1940, a notice of intention to appear. Such a notice should be filed not later than July 23 by any person interested in the July 25 hearing.

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