

U. S. DEPARTMENT OF LABOR
Wage and Hour and Public Contracts Divisions
165 West 46th Street
New York 19, N. Y.

Payment on "Salary Basis" for Executive, Administrative
and Professional Employees Clarified

The principles applied by the Wage and Hour and Public Contracts Divisions in determining whether an employee meets the salary requirement for exemption as an executive, administrative, or professional employee are explained in a statement issued today by L. Metcalfe Walling, Administrator of the Divisions. In response to requests for further clarification of the phrase "compensated on a salary basis" as used in the applicable regulations, Mr. Walling restated the Divisions' position as follows:

"The minimum-wage and overtime provisions of the Fair Labor Standards Act and the Walsh-Healey Public Contracts Act do not apply to employees employed in a bona fide executive, administrative or professional capacity, as these terms are defined and delimited in sections 541.1, 541.2 and 541.3, respectively, of Regulations, Part 541, issued under the Fair Labor Standards Act. In order to come within this exemption, an employee otherwise qualified under section 541.1 as an executive must be compensated for his services on a salary basis at not less than \$30 per week (exclusive of board, lodging, or other facilities), and an employee otherwise qualified under section 541.2 or section 541.3 as an administrative or professional employee must be compensated for his services on a salary or fee basis at a rate of not less than \$200 per month (exclusive of board, lodging and other facilities).

"An employee will be considered to be paid on a 'salary basis' within the meaning of sections 541.1, 541.2 or 541.3 of Regulations, Part 541, if under his employment agreement he regularly receives each pay period, on a weekly, bi-weekly, semi-monthly, monthly or annual basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the number of hours worked or in the quantity or quality of the work performed during the pay period. However, the fact that less than this amount is paid for a particular pay period because disciplinary deductions are made for unreasonable absences would not in itself prove that the employee is not employed on a salary basis. On the other hand, since it is well recognized that bona fide executive, administrative and professional employees are normally allowed some latitude with respect to the time spent at work, an employee will not be regarded as being paid on a salary basis if deductions are made for those types of absences ordinarily allowed such employees. For example, an employee is not being paid on a salary basis, if the employer makes deductions from his salary for an afternoon when he goes home early or when he occasionally takes a day off, unless, under the circumstances of a particular case, such absences must be considered unreasonable."

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