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UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
WASHINGTON, D. C.

TITLE 29 - LABOR
CHAPTER V - WAGE AND HOUR DIVISION

PART 541 - SECTIONS 541.1 to 541.6 -
REGULATIONS DEFINING AND DELIMITING THE
TERMS "ANY EMPLOYEE EMPLOYED IN A BONA
FIDE EXECUTIVE, ADMINISTRATIVE, PROFES-
SIONAL, OR LOCAL RETAILING CAPACITY, OR
IN THE CAPACITY OF OUTSIDE SALESMAN"
PURSUANT TO SECTION 13(a)(1) OF THE
FAIR LABOR STANDARDS ACT

The following Regulations -- Part 541, Sections 541.1 to 541.6 (Regulations Defining and Delimiting the Terms "Any Employee Employed in a Bona Fide Executive, Administrative, Professional, or Local Retailing Capacity, or in the Capacity of Outside Salesman" Pursuant to Section 13(a)(1) of the Fair Labor Standards Act) are hereby issued. These regulations **repeal and supersede** all regulations previously issued defining and delimiting the terms "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman," and shall become effective on October 24, 1940, and shall continue in force and effect until hereafter modified.

Signed at Washington, D. C., this 12th day of October, 1940.



Philip B. Fleming, Administrator
Wage and Hour Division
Department of Labor

Published in the Federal Register October 15, 1940.

Section 541.1. — Executive.

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

- (A) whose primary duty consists of the management of the establishment in which he is employed or of a customarily recognized department or subdivision thereof, and
- (B) who customarily and regularly directs the work of other employees therein, and
- (C) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and
- (D) who customarily and regularly exercises discretionary powers, and
- (E) who is compensated for his services on a salary basis at not less than \$30 per week (exclusive of board, lodging, or other facilities), and
- (F) whose hours of work of the same nature as that performed by nonexempt employees do not exceed twenty percent of the number of hours worked in the workweek by the non-exempt employees under his direction; provided that this subsection (F) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment.

Section 541.2. — Administrative.

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

- (A) who is compensated for his services on a salary or fee basis at a rate of not less than \$200 per month (exclusive of board, lodging, or other facilities), and
- (B) (1) who regularly and directly assists an employee employed in a bona fide executive or administrative capacity (as such terms are defined in these regulations), where such assistance is nonmanual in nature and requires the exercise of discretion and independent judgment; or

- (2) who performs under only general supervision, responsible nonmanual office or field work, directly related to management policies or general business operations, along specialized or technical lines requiring special training, experience, or knowledge, and which requires the exercise of discretion and independent judgment; or
- (3) whose work involves the execution under only general supervision of special nonmanual assignments and tasks directly related to management policies or general business operations involving the exercise of discretion and independent judgment.

Section 541.3 -- Professional.

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

(A) engaged in work

- (1) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, and
- (2) requiring the consistent exercise of discretion and judgment in its performance, and
- (3) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and
- (4) whose hours of work of the same nature is that performed by nonexempt employees do not exceed twenty percent of the hours worked in the work-week by the nonexempt employees; provided that where such nonprofessional work is an essential part of and necessarily incident to work of a professional nature, such essential and incidental work shall not be counted as nonexempt work; and
- (5) (a) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education

and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

- (b) predominantly original and creative in character in a recognized field of artistic endeavor as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training, and the result of which depends primarily on the invention, imagination or talent of the employee, and
- (B) compensated for his services on a salary or fee basis at a rate of not less than \$200 per month (exclusive of board, lodging, or other facilities); provided that this subsection (B) shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof.

Section 541.4 — Local retailing capacity.

The term "employee employed in a bona fide * * * local retailing capacity" in section 13 (a) (1) of the Act shall mean any employee

- (A) who customarily and regularly is engaged in
 - (1) making retail sales the greater part of which are in intrastate commerce; or
 - (2) performing work immediately incidental thereto, such as the wrapping or delivery of packages, and
- (B) whose hours of work of the same nature as that performed by nonexempt employees do not exceed twenty percent of the number of hours worked in the workweek by such nonexempt employees.

Section 541.5 — Outside salesman.

The term "employee employed * * * in the capacity of outside salesman" in section 13 (a) (1) of the Act shall mean any employee

- (A) who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in
 - (1) making sales within the meaning of section 3 (k) of the Act; or
 - (2) obtaining orders or contracts for the use of facilities for which a consideration will be paid

by the client or customer, and

- (B) whose hours of work of the same nature as that performed by nonexempt employees do not exceed twenty percent of the number of hours worked in the workweek by such nonexempt employees; provided that work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

Section 541.6 — Petition for amendment of regulations.

Any person wishing a revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, either in support of or in opposition to the proposed changes. In determining such future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

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