

APR 13 1995

This is in reply to your request for an opinion concerning the application of the Fair Labor Standards Act (FLSA) to the paralegal profession. Specifically, you would like to know if a paralegal qualifies as a non-exempt employee and would, therefore, be eligible for overtime pay.

You state that the paralegal in question earns a salary of \$30,000 a year, holds a certificate approved by the American Bar Association, and performs the following duties:

1. Drafts federal complaints using the forms provided by various publications.
2. Drafts discovery requests (interrogatories and requests for productions) using various publications and, after reviewing the facts, creating appropriate questions and requests.
3. Responds to opposing party's discovery requests using documentation provided by clients and through discussions with clients.
4. Interviews witnesses and prepares affidavits.
5. Creates and maintains files.
6. Interacts on a regular basis with clients.
7. Prepares subpoenas (witnesses, depositions, records).
8. Reviews Federal, State and Local Rules concerning procedure.
9. Prepares disposition, trial and hearing summaries.
10. Prepares medical releases and medical summaries.

11. Prepares correspondence to clients, opposing counsel and courts.
12. Trial preparation (List of exhibits / witnesses / voir dire / jury instructions).

The above duties are assigned to the paralegal by one of the attorneys, and he performs these tasks fairly independently. At no time does the employee provide advice to any of the firm's clients, and has been told to make no decisions concerning the priority of projects or as to which assignments can be set aside in order to handle other matters. He has also received overtime pay on a previous occasion.

Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Regulations, 29 CFR Part 541, a copy enclosed. An employee will qualify for exemption as a bona fide administrative employee if all the pertinent tests relating to duties, responsibilities and salary, as described in section 541.2 of the regulations, are met.

The definition of "administrative" exempts only employees who are primarily engaged in the responsible work which is characteristic of employment in a bona fide administrative capacity. Thus, the employee must have as his primary duty office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers. In determining whether an employee's exempt work meets the primary duty requirement, the amount of time spent in the performance of administrative duties is a useful guide in determining the primary duty of an employee. In the ordinary case, it may be taken as a good rule of thumb that primary duty means the major part or over 50 percent of the employee's time.

Activities contemplated by the regulations as being "directly related to management policies or general business operations" of an employer are those related to the administrative operations of the business, as distinguished from the basic tasks of the employer's business, i.e., the "production" work. Based on the information provided, it is our opinion that the paralegal in question is engaged in the "production work" of his or her employer, and does not qualify for exemption as a bona fide administrative employee, as discussed in section 541.2 of the regulations.

In addition, it continues to be our opinion that the duties of paralegal employees do not involve the exercise of discretion and independent judgment of the type required by section 541.2(b) of the regulations. The outline of the duties of the paralegal employees submitted with your letter describes the use of skills

rather than discretion and independent judgment. The paralegal employee appears to fit more appropriately into that category of employees who apply particular skills and knowledge in preparing assignments. Employees who apply such skills and knowledge are not deemed to be exercising independent judgment, even if they have some leeway in reaching a conclusion.

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 also represented that this opinion is not sought on behalf of a client or firm which is under investigation by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with, the provisions of the FLSA.

We trust that the above is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

Enclosure