

JUL 11 1995

Dear Mr.

This is in response to your letter in which you request an opinion regarding full workweek absences of overtime-exempt employees for jury duty, witness attendance, and temporary military leave.

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, Part 541. An employee may qualify for exemption if all of the pertinent tests relating to duties, responsibilities and salary, as discussed in the appropriate section of the Regulations, are met. One such test requires that an otherwise exempt employee be paid on a salary basis, as described in section 541.118 of the Regulations.

An employee will be considered to be paid on a salary basis within the meaning of the Regulations if under his or her employment agreement he or she regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his or her compensation, which amount is not subject to reduction because of variation in the quality or quantity of the work performed.

You ask under section 541.118(a)(4) of Part 541, does the salary basis requirement for overtime exemption require an employer to pay an overtime-exempt employee his or her salary for a workweek in which he or she performs no work for the employer because of absence from work due to jury duty service, witness attendance, or temporary military duty for that entire workweek.

Under the Regulations an otherwise exempt employee need not be paid for any workweek in which he or she performs no work. The employer therefore would not have to compensate the employee for the weeks he or she performed no work for the employer due to jury duty, serving as a witness, or temporary military duty.

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 that 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.

We trust that the above information is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator