

MAR - 4 1997

This is in response to your letter of July 2, 1996, concerning your client's proposal to reduce the workweek of certain exempt employees from 40 hours to 32 hours with a commensurate reduction in pay. You ask whether such a reduction will affect the exempt status of these employees.

Section 13(a)(1) of the Fair Labor Standards Act 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 the Regulations at 29 C.F.R. Part 541. An employee may qualify for exemption if all the pertinent tests relating to duties, responsibilities and salary, as discussed in the appropriate section of the regulations, are met.

An exempt employee must be paid on a salary basis, as described in section 541.118 of the regulations. Section 541.118 provides that an employee will be considered to be paid "on a salary basis" 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 the quality or quantity of the work performed.

Your client is an employer in the mental health field. Because of a reduction in spending by the state on programs administered by this employer, it must reduce operating costs. The employer has the option of either reducing the workweek for certain exempt employees or laying off employees. It proposes to reduce the workweek of the exempt employees from 40 to 32 hours with a commensurate reduction in pay. None of the employees affected will be paid less than \$250 per week after the reduction.

As stated in the Administrator's opinion letter of November 13, 1970 (WH-93), Section 541.118 does not preclude a bona fide reduction in an employee's salary which is not designed to circumvent the salary basis requirement. A reduction in salary

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resulting from a reduction in the workweek under the circumstances you describe will not defeat an otherwise valid

exemption. However, if the amount of the deduction reduces the salary of an employee below the amount required by the regulations, the exemption will be lost for that employee.

I trust that this information has been responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team