

JUN 30 1997

This is in reply to your letter of January 13 requesting an opinion as to whether licensed veterinary technicians (LVTs) are exempt professional employees under section 13(a)(1) of the Fair Labor Standards Act (FLSA).

You indicate that you employ licensed veterinary technicians who attend a minimum of two years college and are licensed by the State of New York to perform various medical procedures.

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, professional, or outside sales capacity. In order to qualify for exemption under section 13(a)(1), an employee must meet all the pertinent tests relating to duties, responsibilities, and salary as contained in Regulations, 29 CFR Part 541. One of the tests for professional status under section 541.3(a)(1) requires that the employee perform work which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. For example, the professions of law, medicine, nursing, and theology have been traditionally recognized as professional within the meaning of section 541.3, since such professions require a prolonged course of specialized intellectual instruction. See section 541.301 and 541.302. Further examples of professions meeting the requirement for a prolonged course of specialized intellectual instruction and study are given in section 541.301(e)(1).

A "prolonged course of ... study" has generally been held to include only those employees who have acquired at least a baccalaureate degree or its equivalent which includes an intellectual discipline in a particular course of study as opposed to a general academic course otherwise required for a baccalaureate degree. Work which can be performed by employees with education and training which is less than

that required for a bachelor's degree would not be work of a bona fide professional level within the meaning of the regulations.

It is clear that veterinary technician work involves primarily the use of skills and procedures which do not require four years of college or university training to obtain a degree in a professional discipline. The information provided suggests that the LVTs are best characterized as skilled nonexempt technicians. Therefore, it is our opinion that the LVTs do not meet the requirements in Regulation 541.3 for exemption as a professional employee. As a result these employees would be subject to both the minimum wage and overtime requirements of the FLSA and should be paid accordingly.

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 this satisfactorily responds to your inquiry.

Sincerely,

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