

OCT 20 1997

This is in response to your inquiry concerning certain pay docking practices that may affect vocational instructors at the  
the You ask whether the policy violates the Fair Labor Standards Act (FLSA).

It appears that you are concerned about the salary basis requirements under 29 CFR Part 541. These regulations provide the tests for exemption for executive, administrative, professional and outside sales workers under § 13(a)(1) of the FLSA. Employees whose duties, responsibilities, and salary meet the tests in the regulations are exempt from the minimum wage and overtime pay requirements of the FLSA.

As indicated in 29 CFR § 541.301, vocational teachers who meet the duties and responsibilities tests can qualify for exemption as professional employees under § 13(a)(1). However, the regulations provide an exception to the salary or fee basis test for certain professionals including teachers. See 29 CFR § 541.314. Moreover, 29 CFR § 541.5d specifically provides that, under certain conditions, the pay of public employees may be docked because the employee has not accrued sufficient leave, or whose accrued leave has been exhausted.

Thus, docking of such employees' pay (because they do not have leave credits to supplement eight hours of holiday pay earned to cover the scheduled 10-hour shift on a holiday not worked) would not violate the FLSA.

I trust that the above is responsive to your inquiry. Please let me know if you have any further questions.

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

OCT 20 1997

This is in response to your letter concerning the application of the Fair Labor Standards Act (FLSA) to your employment as administrative assistant for the

You state that you are responsible for assisting and greeting members and guests; maintaining the master calendar of community events, the accounts receivable and accounts payable systems, the office equipment and supplies and the filing system; coordinating weekly and monthly schedules of officials; assisting the Board of Directors and the Executive Director in preparing the monthly newsletter and performing special projects; overseeing volunteers, and the Hospitality Assistant in managing various records and reports; and performing other duties as requested by the Executive Director.

The FLSA (minimum wage law) is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage, \$5.15 an hour effective September 1, 1997, for all hours worked. Overtime pay of not less than one and one-half times the regular rate of pay is required for all hours worked over 40 in a workweek. Prior to September 1, the minimum wage was \$4.75 an hour. The major provisions of the law are outlined in the enclosed "Handy Reference Guide to the Fair Labor Standards Act."

Section 13(a)(1) of the FLSA provides a minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, professional, or outside sales capacity, as those terms are defined in Regulations, 29 CFR Part 541 (copy enclosed). In order to qualify for exemption under section 13(a)(1), an employee must meet all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in the appropriate sections of the Regulations.

An employee who is paid on a salary or fee basis of at least \$250 per week may qualify for exemption as a bona fide administrative employee if the employee's primary duty is office or nonmanual work directly related to management policies or general business operations of his or her employer or his or her employer's customers, which includes work requiring the exercise of discretion and independent judgment. (See section 541.2 of the Regulations.)

The term "discretion and independent judgment", as used in the Regulations, implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. The term applies to the kinds of decisions normally made by persons who formulate or participate in the formulation of policy within their spheres of responsibility or who exercise authority within a wide range to commit their employer in substantial respects financially or otherwise.

It appears that your responsibilities, as administrative assistant, require the use of skills acquired by training or experience in applying techniques, procedures, or specified standards. An employee is not exercising "discretion and independent judgment" within the meaning of section 541.2 if he or she merely applies his or her knowledge in following prescribed procedures, or determining which procedure to follow, or determining whether specified standards are met.

Therefore, it is our opinion that your position, as described above, does not qualify for the administrative exemption. Accordingly, you must be paid in accordance with the minimum wage and overtime pay provisions of the FLSA.

We trust that this information is responsive to your inquiry.

Sincerely,

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

Enclosures