



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FLSA2008-19

December 19, 2008

Dear Name*:

This is in response to your request for an opinion regarding whether store managers lose their exempt status under section 13(a)(1) of the Fair Labor Standards Act (FLSA)* by participating in a seven-week training program to become eligible for promotion to the area sales manager position. It is our opinion that bona fide exempt store managers would not lose their exempt status by participating in the training program you describe in your inquiry.

Each year a number of high performing store managers are selected to participate in a training program to become eligible for promotion to the position of area sales manager. Area sales managers supervise eight to ten store managers. During the training period, each of the store managers accompanies an area sales manager on visits to area stores, reviews store paperwork, addresses issues with the managers of the stores visited, investigates inventory shortages and violations of company policy, and attends sales meetings. At the beginning of the training period, the trainee simply "shadows" the area sales manager, but as the training progresses, the area sales manager delegates more and more duties to the trainee. By the end of the training period, it is the area sales manager who "shadows" the trainee. According to your letter, during the first week of the training period, the trainee spends little time performing exempt work, and during the first several weeks of training, it is unlikely that the trainee spends more than half of the time performing exempt work.

During the training period, trainees analyze sales figures, product returns, and inventory data to determine store performance; review data with the store manager and suggest improvements; review the hours worked by employees; approve payroll; determine whether the store manager allocates labor hours effectively and, if not, suggest improvements; audit lottery ticket sales; and work with the store manager to control losses.

Trainees who fail to complete the training program are allowed to continue working in their position as store manager, an exempt position. After successful completion of the training program, a trainee resumes the regular exempt duties as store manager until an area sales manager position becomes available and he or she is selected for promotion to the vacancy. You state that the store manager's salary is maintained, or increased, during the training period. For purposes of this opinion, you asked that we assume the store

* Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

manager and area sales manager positions qualify for the executive exemption under section 13(a)(1) of the FLSA. You ask whether the store manager loses his or her exempt status during the training period.

You note that [29 C.F.R. § 541.705](#) states, “exemptions do not apply to employees training for employment in an executive . . . capacity who are not actually performing the duties of an executive . . . employee.” You also note that exemptions normally apply on a workweek by workweek basis. You point out, however, that in this case, the store managers have been working for years as bona fide exempt managers. You cite Wage and Hour Opinion Letter June 14, 1968, which declined to offer an opinion regarding the exempt status of employees “during the portion of the training program that is between the periods in which they are clearly exempt under the regulations” pending clarification of the courts. You also cite to a federal district court case in which the plaintiff was found to be exempt during a period of training that was between two periods in which he qualified as an exempt systems engineer. *See Booth v. EDS Corp.*, 799 F. Supp. 1086, 1093 (D. Kan. 1992). (“[The plaintiff] has pointed to no evidence in the record that indicates that he or EDS considered phase two of the [training] program to be a separate employment position.”).

The fact that, during at least some of the weeks of training, the store managers do not perform significant amounts of exempt work, in and of itself, does not cause the store managers to lose their exempt status because the primary duty test for executives need not be met each and every workweek in all cases. In its 2004 revisions to 29 C.F.R. Part 541, the Department included this discussion in the preamble to the final regulations:

As stated in the 1949 Weiss Report at 61, the search for an employee’s primary duty is a search for the “character of the employee’s job as a whole.” Thus, both the current and final regulations “call for a holistic approach to determining an employee’s primary duty,” not “day-by-day scrutiny of the tasks of managerial or administrative employees.” *Counts v. South Carolina Electric & Gas Co.*, 317 F.3d 453, 456 (4th Cir. 2003) (“Nothing in the FLSA compels any particular time frame for determining an employee’s primary duty”). To clarify this “holistic approach,” the Department has reinserted in subsection (a) the language from current 541.304 that the determination of an employee’s primary duty must be based on all the facts in a particular case “*with the major emphasis on the character of the employee’s job as a whole.*”

69 Fed. Reg. 22,122, 22,186 (Apr. 23, 2004) (emphasis in original).

In this case, there is no reason to believe that the seven-week training program itself is an employment position in the company. Nor is it reasonable to conclude that the store managers’ primary duty changes during the seven weeks of training. These employees, who we are to assume have been employed as bona fide exempt store managers for years, remain exempt during the seven weeks of management training because their primary duty continues to be that of an exempt store manager. The training provided is of limited duration and does not consist of the performance of work that would otherwise be performed by nonexempt workers. The managers return to their normal exempt store

manager duties following the training. Under these circumstances, where the trainees are employed in exempt positions and are temporarily reassigned to training for a different exempt position, it is our opinion that the exemption is not lost during the training period.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express 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 letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino
Acting Administrator

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**