



FLSA2007-7

February 8, 2007

Dear **Name***:

This is in response to your request for an opinion concerning the applicability of the administrative exemption under section 13(a)(1)¹ of the Fair Labor Standards Act (FLSA) to Case Managers employed by your client (“Company”). For the reasons that follow, it is our conclusion that these employees do not qualify for the administrative exemption and must be paid in compliance with the minimum wage and overtime requirements of the FLSA.

You state that the Company is a service provider for individuals with disabilities. The Company works with physicians and other third parties to help consumers with disabilities increase their self-sufficiency at home and in the community. The primary duty of Case Managers is to meet and to work with consumers to gather information, to assess each consumer’s needs, to assess the costs of care, to prepare a plan of care, and to identify and to implement services to meet the consumer’s needs. Case Managers do not personally deliver or administer services to the consumers, but are responsible for planning and helping to obtain those services from third-party service providers.

Case Managers do not operate pursuant to written protocols or formulas. Rather, Case Managers draw upon their education and experience to identify and to procure whatever group of services may be appropriate for each consumer, maximizing that consumer’s ability to live outside an institution (such as a group home, assisted living center, nursing home, or state hospital). Case Managers may seek information and input from colleagues and other resources, but are independently responsible for developing a plan of care for each consumer. Each plan of care is, by necessity, driven by the individual needs and abilities of the consumer. A plan of care may include services such as advocacy/case management, independent living skills training, peer support, physical therapy, cognitive therapy, speech therapy, occupational therapy, or vocational rehabilitation.

Case Managers also monitor the delivery of services in coordination with the consumer and third-party service providers. In addition, Case Managers assist consumers with related matters, including consumers’ eligibility for benefits through Medicaid, Medicare, Social Security, and private insurance.

Case Managers perform their work free from direct supervision. Case Managers develop and implement plans of care without the requirement of approval by a superior, but their work is regularly reviewed by a Company vice president for quality and timeliness. The Company prefers that Case Managers have a bachelor’s degree in social services or one to three years of related experience. For purposes of our response, you ask us to assume that Case Managers are paid on a salary basis at a rate of at least \$455 per week.

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

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 29 C.F.R. Part 541. An employee may qualify for exemption if all of the pertinent tests relating to duties and salary are met.

As stated in 29 C.F.R. § 541.200(a), the term “employee employed in a bona fide administrative capacity” means “any employee”:

- (1) Compensated on a salary or fee basis at a rate of not less than \$455 per week
...;
- (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- (3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

In the context of the administrative exemption, the phrase “work directly related to the management or general business operations of the employer” refers to work in such functional areas as tax, finance, accounting, marketing, research, public relations, and computer network, among others. *See* 29 C.F.R. § 541.201(b). In addition, “[a]n employee may qualify for the administrative exemption if the employee’s primary duty is the performance of work directly related to the management or general business operations of the employer’s customers.” 29 C.F.R. § 541.201(c). This may include “employees acting as advisers or consultants to their employer’s clients or customers.” *Id.*

With regard to the type of work performed, the preamble to the Department’s 2004 revisions to the Part 541 regulations explains that “the administrative exemption covers only employees performing a particular type of work—work related to assisting with the running or servicing of the business.” 69 Fed. Reg. 22,122, 22,141 (Apr. 23, 2004). Furthermore, the administrative exemption “relates to employees whose work involves servicing the business itself—employees who ‘can be described as staff rather than line employees.’” *Id.* Although the “production versus staff” dichotomy is illustrative, rather than dispositive, it “is still a relevant and useful tool in appropriate cases to identify employees who should be excluded from the exemption.” *Id.*

After reviewing the information you provided, we believe that the activities performed by Case Managers employed by your client are more related to providing the Company’s ongoing, day-to-day case management services for its consumers, which involves duties such as assessing costs of care, preparing a plan of care, and identifying and implementing services to meet the consumers’ needs, rather than performing administrative functions directly related to managing either your client’s business or any business of your client’s customers. A Case Manager is not primarily tasked with performing duties in any of the management or general business functional areas described in 29 C.F.R. § 541.201(b); nor is the Case Manager primarily tasked

with providing administrative services to the employer's customers as contemplated in 29 C.F.R. § 541.201(c). Therefore, it is our opinion that Case Managers employed by your client do not qualify for the administrative exemption under section 13(a)(1). *See* Wage and Hour Opinion Letters [FLSA2006-20NA](#) (Sept. 8, 2006) and [FLSA2005-30](#) (Aug. 29, 2005).

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,

Paul DeCamp
Administrator

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