



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

FLSA2006-20NA

September 8, 2006

Dear **Name***:

This is in response to the request for an opinion we received from your organization regarding the exempt status under the Fair Labor Standards Act (FLSA) of your Case Managers who work with people who have developmental disabilities. You included a position description for the position with your request. Although you did not identify any basis for the possible exemption of these employees, we assume that you were asking whether they could qualify as exempt administrative employees under section 13(a)(1). Based upon the job duties set forth in the position description you provided, we conclude that Case Managers do not qualify for the administrative exemption under the revised regulations at 29 C.F.R. Part 541, which became effective on August 23, 2004. *See Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 69 Fed. Reg. 22,122 (Apr. 23, 2004).

Case Managers are responsible for teaching up to 30 people with developmental disabilities how to acquire the physical, intellectual, emotional, and social skills needed to live as independently as possible. The employees ensure the completion of the assessments of participants' skills, coordinate the development of individual service plans, advocate for the needs and preferences of participants, identify community resources for the needed services and any barriers to service delivery, coordinate the delivery of services and intervene when services are not delivered, assist participants in money management, complete quarterly reviews for each participant, and intervene in crisis situations. They are also responsible for completing documentation relating to the services provided. The employees are required to have either a college degree (in any subject) and one year of experience in social, behavioral, human services or related work, or a high school diploma (or GED) and two years of such experience.

The FLSA regulations at 29 C.F.R. Part 541 establish three different requirements for exemption relating to the salary level of employees, the salary basis of payment, and required duties. The regulations generally provide that employees must be paid at least \$455 a week on a salary basis in order to qualify for exemption from the FLSA's minimum wage and overtime requirements. We will assume for purposes of this letter that the Case Managers satisfy both of these requirements.

With respect to the duties requirements for the administrative exemption, the regulations require that the employee's primary duty be "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 the employee's primary duty must include "the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. 541.200(a) (copy enclosed). The administrative exemption thus has requirements pertaining to

both the “type of work performed” and the “level of importance or consequence of the work performed.” 69 Fed. Reg. at 22,139.

“The phrase ‘directly related to management or general business operations’ refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.” 29 C.F.R. § 541.201(a) (copy enclosed). Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax, finance, accounting, budgeting, insurance, quality control, purchasing, advertising, marketing, research, safety and health, personnel management, employee benefits, and labor relations. 29 C.F.R. § 541.201(b) (copy enclosed). An employee also 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, such as acting as a tax adviser or financial consultant to the employer’s clients or customers. 29 C.F.R. § 541.201(c) (copy enclosed).

To qualify for the administrative exemption, an employee’s primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term “matters of significance” refers to the level of importance or consequence of the work performed.

29 C.F.R. § 541.202(a) (copy enclosed).

The phrase “discretion and independent judgment” must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee’s assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

29 C.F.R. § 541.202(b) (copy enclosed). As explained in the preamble to the final rule, “[f]ederal courts generally find that employees who meet at least two or three of these factors mentioned above are exercising discretion and independent judgment, although a case-by-case analysis is required.” 69 Fed. Reg. at 22,143.

After reviewing the information you provided, we believe that the activities the Case Managers perform are most directly related to providing the ongoing, day-to-day, case management services that the employer provides to its clients, rather than performing administrative functions directly related to the management of the employer’s business. The Case Managers’ primary duty is servicing up to 30 clients with developmental disabilities by assessing their skills, coordinating the development of individual service plans, teaching them the skills needed to live independently, advocating for their needs and preferences, identifying community resources for the needed services, and coordinating the delivery of these services. Thus, Case Managers do not have a primary duty related to performing work in any of the management or general business operational areas described in 29 C.F.R § 541.201(b) (copy enclosed) (such as tax, finance, accounting, marketing, and personnel management); nor are the Case Managers performing such general business services for the employer’s customers, as contemplated in 29 C.F.R. § 541.201(c) (copy enclosed). Therefore, we conclude that the Case Managers are not exempt because their job duties do not satisfy the requirement that the primary duty must be 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. *See* Wage and Hour Opinion Letter FLSA2005-30 (Aug. 29, 2005) (finding that employees in the position of Regional Advocate for services for people with disabilities do not satisfy the duties test for the administrative exemption), and Wage and Hour Opinion Letter March 5, 1999 (finding that employees in the positions of intake coordinator, program coordinator, and assisted living coordinator for individuals with disabilities do not qualify for the administrative exemption) (copies enclosed).

If you have questions about other exemptions, we direct your attention to the Wage and Hour Division’s website at www.dol.gov/whd where you can find many compliance assistance materials, including opinion letters released during the past several years, which you may find informative.

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 issue 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 is responsive to your inquiry.

Sincerely,

Barbara R. Relford
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures

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