



August 26, 2005

FLSA2005-28

Dear **Name***,

This is in response to your request for an opinion concerning the application of the learned professional exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA) to sales engineers employed by your client (Company), which is engaged in the production and distribution of DC motors for automotive components, audio and visual products, information and communication equipment, and home industrial products.

You request that the sales engineer position be evaluated in light of the final rule implementing minimum wage and overtime pay exemptions under section 13(a)(1) of the FLSA. This section 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 the final rules at 29 CFR Part 541 that took effect on August 23, 2004. 69 FR 22122 (April 23, 2004). An employee may qualify for exemption as a bona fide professional employee if all the pertinent tests relating to duty, salary level and salary basis are met. We conclude that sales engineers meet the regulatory tests and thus qualify for the exemption.

According to the job description you provided, the sales engineer position requires a minimum four-year degree in mechanical or electrical engineering. The sales engineer position involves a combination of sales and applications engineering activities. The position is responsible for increasing new and existing business opportunities by adapting the Company's motor designs into various applications. The sales engineer provides excellent sales and engineering service, and technical support to help customers develop new products and improve existing products.

As part of the sales engineer's essential job functions, he or she maintains close contacts with customers' purchasing and engineering staff through frequent visits, follow-up meetings and correspondence. The sales engineer pursues new applications and business opportunities to increase the use of the Company's products. Also, the sales engineer provides quotations, obtains purchase orders and contracts, and conducts market research. The sales engineer exercises discretion and independent judgment regarding the engineering specifications required for a given product application, based on advanced engineering and product knowledge. He or she supplies engineering and technical support to existing and prospective customers, resolves engineering related problems with customers, and processes necessary engineering approvals. In addition, the sales engineer collects data and samples for the Company's "next generation" motor development; verifies industry and market standards or developments; and makes recommendations for clarification or changes in the Company's motor designs, quality or production processes.

Below is a discussion of the learned professional exemption and the primary duty requirement, which is then followed by an analysis of whether the sales engineer position qualifies for the exemption.

Learned Professional Exemption.

As discussed in section 541.301(a), "[t]o qualify for the learned professional exemption, an employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. This primary duty test includes three elements:

1. The employee must perform work requiring advanced knowledge;
2. The advanced knowledge must be in a field of science or learning; and
3. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction."



Pursuant to § 541.300(a)(1), the learned professional exemption also requires that the employee is compensated on a salary or fee basis at a rate of not less than \$455 per week. We assume for purposes of this letter that the sales engineers meet the salary level and salary basis requirements.

With regard to the duties requirement, section 541.301(b) states that “[t]he phrase ‘work requiring advanced knowledge’ means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and independent judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.”

Section 541.301(c) describes the phrase “field of science or learning” to include the traditional professions of law, medicine, theology, accounting, engineering, teaching, pharmacy and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

Section 541.301(d) in part states that “[t]he phrase ‘customarily acquired by a prolonged course of specialized intellectual instruction’ restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree.” This section further clarifies that “the learned professional exemption is not available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical or physical processes.”

Primary Duty Requirement:

As discussed in section 541.700(a), “[t]o qualify for exemption under this part, an employee’s ‘primary duty’ must be the performance of exempt work. The term ‘primary duty’ means the principal, main, major or most important duty that the employee performs. 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.”

“The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement.” Section 541.700(b).

With regard to the first element of the learned professional exemption’s duties test, that the employee must perform work requiring advanced knowledge, this test is met if the work performed is predominantly intellectual in character and includes the consistent exercise of discretion and judgment, as distinguished from performing routine mental, manual, mechanical or physical work. See 29 C.F.R. § 541.301(b). This test is not met simply because an employee has a bachelor’s degree in a specialized field, like engineering; the outcome depends upon whether the particular job requires the employee to apply that advanced knowledge. See Opinion Letters dated October 15, 2003 and July 7, 1993 (copies enclosed). The sales engineer’s work, among other things, includes: collecting data and samples for the Company’s “next generation” motor development; verifying industry and market standards or developments; developing files of engineering specifications/drawings and engineering changes; and making recommendations for clarification or changes in the Company’s motor designs, quality or production processes. Such work is predominantly intellectual in character. Furthermore, the sales engineer’s duties and responsibilities also meet this element as he or she exercises discretion and judgment in working with the customer independently at the customer’s location to determine engineering specifications required for a given product application, and resolving any engineering-related problems that may occur. The sales engineer supplies engineering and technical support to existing and prospective customers. In



addition, the sales engineer is responsible for communicating sales and engineering-related matters with the relevant departments at Headquarters and the manufacturing plants.

The sales engineer position meets the second element discussed above, as the advanced knowledge required by the job is in a field of science or learning, in this case, engineering. See 29 C.F.R. § 541.301(c). The third element is also met as the position of sales engineer requires advanced knowledge in mechanical or electrical engineering obtained through specialized academic training that is a standard prerequisite for entrance into the engineering profession. These engineers must possess either a BSEE or BSME degree, which requires a prolonged course of specialized intellectual instruction, and you state that the job duties could not be performed without this specific engineering training. See section 541.301(d).

As indicated above, to qualify for the exemption, the sales engineer's primary duty must include these three elements. The factors mentioned in section 541.700(a), which we consider here in determining whether the primary duty requirement is met, include (1) the relative importance of the exempt duties as compared with other types of duties; (2) the amount of time spent performing exempt work; (3) the employee's relative freedom from direct supervision; and (4) the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

With respect to the relative importance of the exempt engineering duties as compared with the sales responsibilities of the sales engineer, you state that the sales activities are directly related to the performance of the engineering aspect of the job. In this regard, without the requisite engineering background and ability to determine engineering specifications and resolve engineering-related problems, the sales engineer's efforts would not result in securing any purchase orders or contracts for the Company's products. In fact, sales naturally result only from the sales engineer's ability to work with a customer to provide engineering and technical support and to resolve engineering-related issues. Thus, as you state, the importance of the exempt engineering duties of the sales engineer far outweigh his/her sales activities.

As to the amount of time spent performing exempt work, you state that well in excess of 50 percent of the employee's time is spent performing engineering versus sales activities. The vast majority of the sales engineer's time is spent with a customer determining the customer's needs and resolving any engineering-related problems, with sales activities following only upon successful completion of the engineering functions. You also indicate that a sales engineer generally performs such work without direct supervision as he or she normally travels to and deals with the customer personally. Furthermore, you state that the sales engineers are paid annual salaries ranging from \$51,000 to \$79,000, compared with sales assistants, who perform the more routine or manual work associated with the sales activities, such as ordering or shipping, and are paid annual salaries ranging from \$33,000 to \$49,000.

After considering the information provided, it appears that the sales engineer's primary duty is the performance of exempt engineering duties, not non-exempt sales activities. Therefore, it is our opinion that the sales engineer described above qualifies for the learned professional exemption under section 13(a)(1) of the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of 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 request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a 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. This opinion letter is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to Portal Act, 29 U.S.C. 259. See



29 C.F.R. 790.17(d), 790.19; Hultgren v. County of Lancaster, Nebraska, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosures: Opinion Letters dated October 15, 2003 and July 7, 1993

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