

**FLSA2021-1**

January 8, 2021

Dear Name\*:

This letter responds to your request for an opinion regarding whether account managers at a life science products manufacturer qualify for the administrative employee exemption under the Fair Labor Standards Act (FLSA). This opinion is based exclusively on the facts you have presented. You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for use in any litigation that commenced prior to your request.

## BACKGROUND

You ask whether account managers employed by your client, a life science products manufacturer, are exempt from the minimum wage and overtime pay provisions of the FLSA under the administrative employee exemption. You state that the account managers must have at least a bachelor's degree in a life science (e.g., biology, biotechnology, medical informatics, or chemistry), or a bachelor's degree in business plus a minimum of five years of experience in the life science industry. You represent that these account managers engage with highly trained scientists in a consultative relationship, learning about the needs of the potential client, researching what company products would meet those needs, and communicating about how the company's products could best fit those needs. Account managers are not closely supervised and are given autonomy, are not required to follow a strictly laid out script or sales process, and are expected to independently develop account plans and strategies and then make independent decisions in answering questions and explaining how a product will benefit the prospective client. They are also given the flexibility to decide how best to develop and engage with potential clients, and have the responsibility to analyze information gleaned from the sales process to create a product solution. You also state that if the customer buys a product, the account manager helps the customer develop scientific protocols for use of the equipment and to ensure results are reproducible.

## GENERAL LEGAL PRINCIPLES

The FLSA requires employers to pay their nonexempt employees not less than the applicable minimum wage for all hours worked and at least "one and one-half times the regular rate at which [the employee] is employed" for all hours worked in excess of 40 in a workweek. 29 U.S.C. §§ 206(a), 207(a). The statute exempts certain types of employees from its minimum wage and overtime pay requirements, including "any employee employed in a bona fide executive, administrative, or professional capacity[.]" 29 U.S.C. § 213(a)(1). An employee generally qualifies for the administrative exemption if: (1) the employee is "[c]ompensated on a salary or fee basis . . . at a rate of not less than \$684 per week[;]" (2) the employee's primary

duty is “office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers[;]” and (3) the employee’s primary duty includes the exercise of “discretion and independent judgment with respect to matters of significance.” 29 C.F.R. § 541.200(a).

To determine the applicability of the exemption, WHD gives the statutory text “a fair (rather than a narrow) interpretation” because the FLSA’s “exemptions are as much a part of the FLSA’s purpose as the [minimum wage and] overtime-pay requirement[s].” *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018) (internal quotation marks and citations omitted); *accord* WHD Opinion Letter FLSA2019-8, 2019 WL 2914104, at \*1 (July 1, 2019).

## OPINION

Based on the facts you have presented, we conclude that the account managers employed by your client qualify as administrative employees and are therefore exempt from the minimum wage and overtime pay requirements of the FLSA. As discussed in more detail below, the account managers meet all three requirements to qualify for the administrative exemption.

### **A. The account managers are paid above the weekly salary threshold.**

You represent that the account managers are paid a base salary ranging from \$60,000 to \$90,000. You state that the account managers typically make in excess of \$107,432 per year in combined base salary and commissions, and that they are paid at least \$684 per week on a guaranteed basis. Accordingly, we conclude the account managers meet the first requirement for the administrative exemption since they are compensated on a salary basis at a rate of at least \$684 per week.

### **B. The account managers’ primary duty is performing office or non-manual work related to management or general business operations.**

We next conclude that the account managers meet the second requirement for the administrative exemption—i.e., their primary duty is non-manual work directly related to the management or general business operations of your client. Based on the facts you provided, the account managers “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).

In reaching this conclusion, the Seventh Circuit’s decision in *Schaefer-LaRose v. Eli Lilly & Co.* is instructive. See 679 F.3d 560 (7th Cir. 2012). In that case, the Seventh Circuit held that the work performed by sales representatives for a pharmaceutical company was “properly . . . characterized as administrative.” *Id.* at 576. In support of this conclusion, the court quoted the preamble to the Department’s 2004 regulations regarding the FLSA section 13(a)(1) exemptions, including that ““the administrative operations of the business include . . . representing the company”” and ““promoting sales.”” *Id.* at 574 (quoting 69 Fed. Reg. 22122, 22138 (Apr. 23, 2004)). Despite finding that none of the administrative functions delineated by the Department in 29 C.F.R. § 541.201(b) was a “perfect description” of the work of pharmaceutical sales employees, the court found that their activities were “sufficiently similar to suggest that the representatives’ work is directly related to the general business operations of the pharmaceutical companies.” *Schaefer-LaRose*, 679 F.3d at 574. Furthermore, the court found that “the core

function of the drug makers . . . is the development and production of pharmaceutical products[,]” and that “the plaintiffs’ work *supports* that function, but is distinct from it[,]” and therefore was administrative work. *Id.*

Similarly, in *Smith v. Johnson & Johnson*, 593 F.3d 280 (3d Cir. 2010), the Third Circuit found that a company’s pharmaceutical sales representative satisfied the management-related duties requirement for the administrative exemption because the representative had to form strategic plans with a high level of planning and foresight to maximize sales in their territories. *Id.* at 285.

Here, as in *Schaefer-LaRose* and *Smith*, your client’s account managers develop relationships with target customers, such as scientists and academics, in order to facilitate a sales process. They get to know the potential customers’ business needs and requirements, and determine the services or products that the customer is most likely to purchase. The broad discretion given to account managers in targeting and working with potential customers supports that the account managers are the point of contact between any potential customers and the company. These account managers are therefore “the principal ongoing representatives of the company” and serve as a “conduit” for technical scientific customer information. See *Schaefer-LaRose*, 679 F.3d at 575. The account managers’ duty of promoting sales through a sophisticated consultative marketing process, in which they engage with highly educated scientists and other professionals to assess their research needs and to recommend products for purchase, is not “production” work, and is instead related to the management of your client’s operations. See *Hines v. State Room, Inc.*, 665 F.3d 235, 242–43 (1st Cir. 2011) (finding sales managers for banquet company exempt in part because “[the employee plaintiffs] were focused on more than simple individual sales transactions . . . they did not simply close contracts. Instead, they worked with each client to create a custom event in all of the particulars.”).<sup>1</sup>

### C. The account managers exercise discretion and independent judgment with respect to matters of significance.

Finally, we conclude that your client’s account managers meet the third requirement for the administrative exemption to apply. Based on the facts you provided, these employees exercise discretion and independent judgment with respect to matters of significance to your client.

As 29 C.F.R. § 541.202(a) explains, to meet this requirement the employee’s primary duty must generally involve “the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered.” An employee’s ability to evaluate needs and interests in this way is a strong indicator of discretion. See *Hines*, 665 F.3d at 243–47 (concluding that sales managers for banquet companies exercised discretion and independent judgment, in part because they worked with clients to “create a custom product”); cf. *Rincon v. Am. Fed’n of State, Cty., & Mun. Emps.*, No. 12-4158 MEJ, 2013 WL 4389460, at \*20-22 (N.D. Cal. Aug. 13, 2013) (holding that an employee responsible for

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<sup>1</sup> Our understanding from your incoming letter is that making sales is an ancillary part of the account managers’ duties. Our conclusion is therefore not in tension with the Department’s position and case law holding that an employee whose primary duty is sales cannot qualify as an exempt administrative employee. See, e.g., 69 Fed. Reg. 22146.

assessing workers’ interest in unionizing exercised discretion, even where a script and relevant criteria may have been provided by the employer), *aff’d*, 638 F. App’x 631 (9th Cir. 2016).

Beyond this criterion, 29 C.F.R. § 541.202(a) also provides that “[t]he term ‘matters of significance’ refers to the level of importance or consequence of the work performed.” In applying this regulation, courts have found that “employees with authority to financially bind their employers make significant decisions within the meaning of § 541.200(a)(3).” *Lutz v. Huntington Bancshares Inc.*, No. 2:12-CV-01091, 2014 WL 2890170, at \*17 (S.D. Ohio June 25, 2014), *aff’d*, 815 F.3d 988 (6th Cir. 2016) (internal quotation marks and citation omitted). *See also Burton v. Appriss, Inc.*, 682 F. App’x 423, 429–31 (6th Cir. 2017) (concluding that an account manager whose role required “a great deal of autonomy” in interacting with potential customers and whose management of client relations had a significant financial impact on the employer’s business met the administrative exemption); *Robinson-Smith v. Gov’t Emps. Ins. Co.*, 590 F.3d 886, 893–97 (D.C. Cir. 2010) (holding that auto damage adjuster met discretion and independent judgment requirement where the employee regularly negotiated with customers over total loss claims).

In *Schaefer-LaRose*, the Seventh Circuit determined that pharmaceutical sales representatives exercised discretion and independent judgment in part because they tailored their messages to individual physicians, responded to questions, and promoted the company’s product with minimal supervision. *See* 679 F.3d at 581–83; *see also DeWalt v. Greencroft Goshen, Inc.*, 902 F. Supp. 2d 1127, 1136–38 (N.D. Ind. 2012) (finding that marketing associate whose employer emphasized that she “used personalized communication techniques to assess the needs and preferences of prospects” exercised discretion and independent judgment in matters of significance). In addition, in *Lutz*, the court found that a loan underwriter exercised discretion and independent judgment when evaluating whether to grant a loan application using underwriting software, in part because the underwriters made decisions that were “more than just mechanical calculations,” and were permitted to deviate from established criteria. 2014 WL 2890170, at \*17–18; *see* WHD Opinion Letter FLSA2008-3, 2008 WL 2018632, at \*2 (Apr. 21, 2008) (concluding that marketing analyst qualified for the administrative exemption in part because of her role in “determining how specific features/uses of the company’s products compare to competing products”).

These authorities prove instructive when evaluating whether your client’s account managers satisfy the third requirement for the administrative exemption. Like the employees in *Schaefer-LaRose*, the account managers are given wide latitude in promoting and marketing products, designing portfolios of products and solutions for potential clients, advising potential and prospective clients, and performing other consultative or servicing activities in support of a prospective or current client’s use of the employer’s products. Although your client provides them training on sales techniques, the account managers are expected to independently develop account plans and strategies under minimal supervision, and to build relationships with potential customers. The account managers’ very high degree of independence makes the jobs more analogous to the exempt employees in *Schaefer-LaRose* and *Smith*, rather than employees in other cases whose more circumscribed discretion contributed to their nonexempt status. *See, e.g., Beauford v. ActionLink, LLC*, 781 F.3d 396, 403–05 (8th Cir. 2015) (holding that brand advocates who followed set scripts and well-established techniques, procedures, and standards set forth in manuals were not covered by the administrative exemption).

Additionally, the account managers may decide how to prospect customers, and are trusted to determine product solutions based on their technical knowledge and their previous customer interactions. These activities involve both careful consideration of the available products and client needs, as well as the gathering and interpretation of sophisticated, unstructured data. To engage in this consultative selling process, the account managers are thus required to have an in-depth and high-level knowledge of life sciences in order to engage meaningfully with customers about the company's products. Furthermore, the account managers are responsible for building and maintaining the chief relationships with other professionals through which the employer indirectly increases its market share, a very consequential duty for the company. *See* 29 C.F.R. § 541.202(a).

By virtue of these facts, we find that the account managers exercise a significant amount of independence and discretion in their decision-making with respect to matters of significance.

## **CONCLUSION**

For the foregoing reasons, we conclude that your client's account managers are exempt administrative employees, and are therefore not subject to the minimum wage and overtime pay requirements of the FLSA.

This letter is an official interpretation of the governing statutes and regulations by the Administrator of the WHD for purposes of the Portal-to-Portal Act. *See* 29 U.S.C. § 259. This interpretation may be relied upon in accordance with section 10 of the Portal-to-Portal Act, notwithstanding that after any such act or omission in the course of such reliance, the interpretation is "modified or rescinded or is determined by judicial authority to be invalid or of no legal effect." *Id.*

We trust that this letter responds to your inquiry.

Sincerely,



Cheryl M. Stanton  
Administrator

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