

FLSA-473

May 17, 1977

This is in reply to your letter of January 14, 1977, requesting that the Wage and Hour Division recognize translators as "professional" employees under the Fair Labor Standards Act.

Section 13(a)(1) of the Act exempts from its pay provisions an employee employed in a bona fide professional capacity. The exemption is not determined on the basis of occupational title or job classification but is granted on the basis of the duties, salary and other requirements of the job of the individual employee involved. Exemptions under the law are to be narrowly construed since the "exempted" individual is denied the protection of both the minimum wage and overtime pay provisions of the Act.

The matter of the professional status of translators has been carefully considered. We are unable to give general recognition to translation as a "learned profession" within the contemplation of section 541.3 of the basic tests and as discussed in section 541.302 of the Regulations. At the present time it appears, based on the information available, that the field of translation is not generally recognized by colleges and universities as a bona fide academic discipline. There appears to be a great variation in academic requirements and an absence of universally accepted standards for employment in the field. To give general consideration, as you propose, to years of experience as an alternative to receipt of a degree in an academic discipline would seriously weaken the professional exemption. The typical symbol of professional training and the best prima facie evidence of its possession is the appropriate degree, and in the professions and advanced academic or professional degree, above and beyond the baccalaureate degree, is a standard prerequisite. The Regulations have been drawn to have as one of the requirements for recognition as a bona fide professional such a course of intellectual training and study as that customarily required by colleges and universities to obtain a degree in a professional discipline.

Accordingly, we cannot state, as you request, that a "competent accredited translator" would be exempt as a professional employee. In particular, we do not have sufficient information from your description to be able to determine whether the holder of an academic degree in translation would meet the requirement of a "prolonged" course of specialized intellectual instruction and study" in Part 541 of the Regulations. However, in the example you give, the employee is not, in our opinion, exempt under section 13(a)(1). The employee in question works for a corporation and translates commercial correspondence, legal documents, patents, technical specifications, financial statements and newspaper or trade magazine articles. The fact that some of the people who prepare these documents -- presumably lawyers, accountants, and engineers -- may themselves be exempt as professional employees under section 13(a)(1) does not mean that the translator is necessarily exempt. A translator can have a deep familiarity with the means and nuances of foreign technical parlance without having the advanced knowledge in the field of law or accountancy or engineering, or without being required to exercise the discretion and judgement, that a professional needs to possess in order to prepare the document being translated.

We wish to point out, however, the fact that or any translator may not be exempt from the law's pay requirement under section 13(a)(1) in no way reflects upon their otherwise "professional" status. The Wage and Hour Division may only attempt to define or clarify the term as it relates to the provisions of the Fair Labor Standards Act.

Sincerely,

Administrator

Enclosure