


FLSA-1006

August 5, 1986

This is in further response to your letter of February 25. You request an opinion as to whether the minimum wage and overtime pay exemption contained in section 13(a)(1) of the Fair Labor Standards Act (FLSA) for bona fide professional employees is applicable to employees of your client who are employed as photographers.

You represent a photography studio which contracts to do photographs for schools, organizations, and businesses, and produces individual prints, pictures, and portraits. The finished photographs are placed in school year books, magazines, and promotional programs. The photographers are employed on a full-time basis. For approximately 4 months per year they are scheduled to work 40 hours per week. During the other 8 months they are given evening and weekend assignments away from one office which take as much as 10 to 15 hours per week over a 40 hour schedule. The photographers are paid in excess of \$250 per week for the normal 40-hour schedule, and they are paid an additional flat amount for the evening and weekend assignments.

During the normal 40 hours the photographers spend 20 percent of their time in the photolab printing and producing negatives from the photographs they had taken. The other 80 percent of their time is spent in covering on-location assignments. Approximately one-half of the employees in question have graduated from a 2 year college of photography. However, you state that since professional photography requires experience more than training, all of your client's photographers are unsupervised. You state that the company relies on the photographers to use their creative talent, invention, and imagination in taking the photographs and in printing and producing the images in the photo lab.

 The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the current minimum wage of \$3.35 an hour for all hours worked and overtime pay for all hours worked over 40 in a workweek.

Section 13(a)(1) of FLSA provides a 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 appropriate sections of the enclosed copy of Regulations, 29 CFR Part 541. In accordance with section 541.3(e) of the regulations, an employee who is paid on a salary or fee basis of at least \$250 per week, whose primary duty consists of the performance of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all or the requirements for exemption as a bona fide professional employee.


In order to qualify as a bona fide professional employee under the exemption for artistic professional employees, the work of the employee must be original and creative in character, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training. Although the photographers may engage in some creative photography, it is our opinion that they are primarily engaged in work that involves the use of skills and techniques which they have acquired through years of experience in the field. Therefore, their primary duty cannot be said to consist of work requiring invention, imagination, or talent in a field of artistic endeavor of the type contemplated by the regulations. The photographs that photographers take in producing pictures for school year books; magazines; sporting, social, and pictures for school year books; work in processing film, are examples of work which, in our opinion, do not meet there level of artistic type professional work required by the regulations for exemption. It is our opinion that the photographers in question cannot qualify for exemption under section 13(a)(1) of FLSA or section 541.3 of the regulations as bona fide professional employees.

We trust that the above information will be of assistance to you. If you have any questions, please do not hesitate to contact us again.

Sincerely,

Paula V. Smith
Administrator

Enclosure

 Minimum wage has been increased by later amendments to the Act.