

## FLSA-321


January 22, 1988

This is in further response to your letter requesting an opinion on the application of section 13(a)(1) of the Fair Labor Standards Act (FLSA) to an employee performing work as an engineering technician who is paid a salary of approximately \$670.00 per week. We regret the delay in responding to your inquiry.

You state that the employee works in a shipyard conducting tests on shipboard equipment. The employee reviews the test procedures set forth in manufacturers' instructions to ensure that the tests can be performed as written; measures the performance of equipment on the ship prior to its installation aboard the ship. The employee assists the chief test engineer in preparing test schedules and records the qualitative and quantitative data obtained in all of the tests. The employee also ensures that equipment is properly installed on the ship. When equipment is defective, the employee prepares deficiency reports identifying the problem that needs to be corrected. Approximately ten percent of the employee's time is spent on duties such as writing reports, keeping records, and completing forms. The majority of time is spent physically performing the task of testing equipment.

The employee has not supervisory duties; does not have any hiring or firing authority; does not make recommendations concerning other employees' promotions and does not evaluate employee job performance. The employee's work is supervised and the employee is required to keep the supervisor informed of the progress of work and of any unusual or controversial problems.

Based on the information provided, you ask (1) whether the employee in question may be assumed to be exempt solely on the basis of a salary of approximately \$35,000 per year and (2) whether this employee's job duties qualify for exemption as an executive, administrative, or professional employee as defined in Regulations, 29 CFR Part 541.

 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 minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. Section 13(a)(1) of FLSA provides a complete minimum wage and overtime pay exemption for executive, administrative, professional, and outside sales employees as those terms are defined in Regulations, Part 541. In order to qualify for exemption under this section, an employee must meet all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in the appropriate section of the regulations.

With respect to your first question, an employee may not qualify for exemption under section 13(a)(1) solely on the basis of the salary he or she is paid. As indicated above, an employee must also meet the duties and responsibilities test under the regulations. Generally, it has been our experience that engineering technicians fail to qualify for exemption under section 13(a)(1) on the basis of their duties and responsibilities.

It is clear that the engineering technician you have described is not exempt as an executive employee, as defined in section 541.1 of the regulations since this employee does not have any management or supervisory responsibilities.

With respect to the exemption for administrative employees, contained in section 541.2 of the regulations, it is our opinion that the engineer technician does not qualify for this exemption. Section 541.2(a) of the regulations provides, in pertinent part, that an exempt administrative employee includes any employee "{w}hose primary duty consist of ... the performance of office or nonmanual work directly related to

management policies or general business operations of his employer..." (emphasis added). As indicated in section 541.203(b), employees who spend most of their time in using tools, instruments, machinery, or other equipment, or performing repetitive operations with their hands, no matter how much skill is required, would not be bona fide administrative employees within the meaning of section 541.2.

Further, it is also our view that the engineering technician you have described would not qualify as a bona fide professional employee, as discussed in section 541.3 of the regulations, since the primary duty does not consist of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as required by section 541.3(a)(1) of the regulations. A "prolonged course of study" has generally been defined to mean at least a baccalaureate degree or equivalent which includes a longer intellectual discipline in a particular course of study as distinguished from a general academic course otherwise required for a baccalaureate degree.


We trust that the above information is responsive to your inquiry.

Sincerely,

Paula V. Smith  
Administrator

Enclosure

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