



FLSA2006-44

November 30, 2006

Dear **Name***:

This is in response to your request for an opinion regarding whether the Boat Captain position described in your letter is exempt from the overtime pay requirement of the Fair Labor Standards Act (FLSA) as an “employee employed as a seaman” pursuant to section 13(b)(6) of the FLSA and 29 C.F.R. Part 783.¹ It is our opinion that the Boat Captain is exempt in those workweeks during which at least 80% of the duties performed are those of a seaman as defined in the regulations.

You state that the Boat Captain is responsible for all operations of a 47-foot, single-engine, single-propeller wooden boat. He is responsible for transporting passengers (employees and/or clients) as needed or requested for boating trips in the Gulf Coast area. He supervises no crew or other employees and is solely responsible for all boating activities involving the company-owned vessel. His major duties include assuming full responsibility for boat operations and all scheduled trips, performing regularly scheduled maintenance on the boat (including cleaning, making repairs, changing the oil in the generator and engine, and painting and varnishing the cabin), overseeing major mechanical and structural repairs of the boat when in dry dock, providing supplies for scheduled trips (mostly pleasure trips, sightseeing, touring, etc.), ensuring passenger safety, tracking weather conditions, deciding whether the boat needs to be moved to safety, adjusting the boat’s moorings, and sometimes being on-call or on-duty for 24 hours a day, such as when conducting an overnight fishing trip that might last anywhere from one to three days. The Boat Captain does not cook or serve food to passengers on these trips; instead, the trips are catered. The Boat Captain’s hours of work fluctuate by season, and he is busier in the summer months, when he generally works more than 40 hours per week. The work is significantly slower in the winter months, including when the boat is removed from the water and taken to an internal maintenance facility each year to restore the hull. During that time there are some weeks when the Boat Captain does not work at all, or does nothing but maintenance and repair work on the boat. In a telephone conversation with a member of the Wage and Hour Division staff, you indicated that the Boat Captain performs no duties that are not boat-related.

Section 13(b)(6) of the FLSA provides an exemption from overtime pay for “any employee employed as a seaman.” As explained in 29 C.F.R. § 783.31,

In accordance with the legislative history and authoritative decisions as discussed in §§ 783.28 and 783.29, an employee will ordinarily be regarded as “employed as a seaman” if he performs, as master or subject to the authority, direction, and control of the master aboard a vessel, service which is rendered primarily as an aid in the operation of such vessel as a means of transportation, provided he performs no

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

substantial amount of work of a different character. This is true with respect to vessels navigating inland waters as well as ocean-going and coastal vessels.

When deciding whether an employee is “employed as a seaman,” the duties of the employee must qualify as “service which is rendered primarily as an aid in the operation of such vessel as a means of transportation.” *Id.* Employees who make repairs to vessels between navigation seasons would not be “employed as” seamen during that period. 29 C.F.R. § 783.33.

An employee will be regarded as “employed as a seaman” if the work performed as a whole meets the test stated in 29 C.F.R. § 783.31, even though during the workweek the employee performs some work of a nature other than that which characterizes the services of a seaman, if the amount of such other “non-seaman’s” work is not substantial. 29 C.F.R. § 783.37. “For enforcement purposes, the Administrator’s position is that such differing work is ‘substantial’ if it occupies more than 20 percent of the time worked by the employee during the workweek.” *Id.* Because the workweek is the unit of time used in determining the applicability of this exemption, the workweek is the period of time used in determining whether a substantial amount of non-seaman’s work has been performed so as to make the exemption inapplicable. 29 C.F.R. § 783.49.

Based on the information you provided, it is our opinion that the Boat Captain would qualify for the FLSA section 13(b)(6) seaman’s exemption during those particular workweeks when he performs duties that characterize the services of a seaman aboard the vessel, provided he does not spend more than 20% of his working time in those weeks performing non-seaman’s work. It appears from your description that the seaman’s exemption would apply to the Boat Captain during his busiest months in the summer boating season when he generally works more than 40 hours a week. In the winter months, if the Boat Captain performs a substantial amount of non-seaman’s work during particular workweeks (more than 20% of his working time), the exemption would not apply to him during those workweeks, but we understand from your description that his weekly hours worked do not exceed 40 during the winter months. During workweeks of 40 or fewer hours worked, payment on any basis that yields at least the federal minimum wage would meet the requirements of the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on 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 letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to 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.

We trust that the above is responsive to your inquiry.

Sincerely,

Paul DeCamp
Administrator

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