



FLSA2019-4

April 2, 2019

Dear **Name***:

This letter responds to your request for an opinion on whether “Nutritional Outreach Instructors” employed by a land-grant public university are exempt from minimum wage and overtime pay requirements 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 inquire on behalf of a land-grant public university in West Virginia. You represent that this university employs “Nutritional Outreach Instructors” in its Extension Services Department. The university’s Extension Service Department provides educational programs in counties across the state. You further represent that the instructors’ primary duty is teaching. Specifically, you state that the instructors teach classes on healthy nutrition and cooking techniques using a “research-based curriculum designed for behavior change.” These classes are open to the public and take place in a variety of locations, such as community centers, churches, and homes. Their duration is “up to 9 weeks, in 90–120 minute sessions with small groups.” Community members who complete the classes receive a certificate. You state that the Nutritional Outreach Instructor position requires a high school diploma or GED.

GENERAL LEGAL PRINCIPLES

FLSA section 13(a)(1) exempts from minimum wage and overtime “any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of ... teacher in elementary or secondary schools)[.]” 29 U.S.C. § 213(a)(1). To determine the scope of this exemption, WHD gives the statutory text a “fair (rather than 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 citation omitted).

An employee is an exempt teacher under 13(a)(1) if his or her primary duty is “teaching, tutoring, instructing or lecturing in the activity of imparting knowledge” and if he or she is doing so as an employee of an “educational establishment.” 29 C.F.R. § 541.303(a).¹ An educational establishment is any form of public or private educational institution. *See* 29 C.F.R.

¹ WHD regulations do not apply the salary level or salary basis test to an exempt teacher under 13(a)(1). *See* 29 C.F.R. §§ 541.303(d), 541.600(e).

§ 541.204(b). The teacher exemption has no minimum education or academic degree requirement. *See, e.g.*, WHD Opinion Letter FLSA2008-11, 2008 WL 5483049, at *1 (Dec. 1, 2008).

Because WHD regulations do not restrict where a teacher may teach or to whom a teacher may impart knowledge, an employee who teaches online or remotely may also qualify for the teacher exemption under 13(a)(1). *See* WHD Fact Sheet #17S: Higher Education Institutions and Overtime Pay Under the FLSA, <https://www.dol.gov/whd/overtime/whdfs17s.pdf>. Accordingly, the exemption would ordinarily apply, for example, to a school’s part-time faculty member whose primary duty is to provide instruction through online courses to remote non-credit learners. *Id.* Similarly, the exemption would ordinarily apply, for example, to a school’s agricultural extension agent who travels and provides instruction to farmers and whose primary duty is imparting knowledge. *Id.*

OPINION

The “Nutritional Outreach Instructors” that you describe in your letter qualify as teachers under section 13(a)(1) and are therefore exempt from the FLSA’s minimum wage and overtime pay requirements.

These instructors have the primary duty of “teaching, tutoring, instructing or lecturing in the activity of imparting knowledge” and are employed by an “educational establishment.” 29 C.F.R. § 541.303(a). Specifically, they teach community members about healthy nutrition and cooking techniques over 9 weeks—duties that are similar to those of agricultural extension agents that WHD has previously described as ordinarily exempt under 13(a)(1). Accordingly, they qualify as exempt teachers under a “fair reading” of 13(a)(1). *See Encino Motorcars*, 138 S. Ct. at 1142–43.

We trust that this letter is responsive to your inquiry.

Sincerely,



Keith E. Sonderling
Acting Administrator

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