

AUG 06 2002

Dear:

This is in response to your letter on behalf of your client, requesting our opinion regarding the applicability of the Fair Labor Standards Act's (FLSA) administrative exemption to employees of a services company who perform exempt administrative work for their employer's customers. You recognize that whether any particular employee satisfies the criteria for the administrative exemption involves a fact-specific inquiry. Thus, you did not ask for an opinion regarding any particular employee or job classification. Rather, you asked only whether an employee who performs administratively exempt work for his employer's customers would be exempt, notwithstanding the fact that the employee could be viewed as producing the administrative services his employer is in business to provide.

Section 13(a)(1) of the FLSA provides a minimum wage and overtime exemption for an employee employed in a "bona fide executive, administrative, or professional capacity." 29 U.S.C. § 213(a)(1). The Act gives the Secretary of Labor authority to "define and delimit" those terms in regulations. As you noted in your letter, the Department's regulations provide that the administrative exemption applies to an employee whose primary duty consists of the "performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers," and whose work requires the exercise of discretion and independent judgment. 29 C.F.R. 541.2(a)(1) and 541.2(e)(2). The interpretive regulations clarify that the phrase "directly related to management policies or general business operations of his employer or his employer's customers" describes activities relating to the administrative operations of a business as distinguished from production or sales work. 29 C.F.R. 541.205(a). Moreover, the phrase limits the exemption to employees who "perform work of substantial importance to the management or operation of the business of his employer or his employer's customers." *Id.*

As you also pointed out, the Department's interpretive regulations further emphasize the applicability of the exemption to employees who perform such administratively exempt work for their employer's customers. The regulations first state that the standard for administratively exempt work is met by many workers "employed as advisory specialists and consultants of various kinds, credit managers, safety directors, claims agents and adjusters, wage-rate analysts, tax experts, account executives of advertising agencies,

customers' brokers in stock exchange firms, promotion men, and many others." 29 C.F.R. 541.205(c)(5). The regulations then provide that the management policies or general business operations on which the employee works:

may be those of the employer or the employer's customers. For example, many bona fide administrative employees perform important functions as advisers and consultants, but are employed by a concern engaged in furnishing such services for a fee. Typical instances are tax experts, labor relations consultants, financial consultants, systems analysts, or resident buyers. Such employees, if they meet the other requirements of § 541.2, qualify for exemption regardless of whether the management policies or general business operations to which their work is directly related are those of their employer's clients or customers or those of their employer.

29 C.F.R. 541.205(d) (emphasis added).

We believe that these regulations demonstrate that the dichotomy between administrative employees and production or sales employees must take into account whether the employer in question is a company engaged in providing administrative services for its customers. Therefore, pursuant to the regulations, we continue to believe that the administrative exemption applies where an employee is performing work that is directly related to the internal management policies or general business operations of his employer's customers.

We trust that this has been fully responsive to your inquiry about the administrative exemption.

Sincerely,

Tammy D. McCutchen  
Administrator