



FLSA2026-5

May 28, 2026

Dear **Name***:

This letter responds to your request for an opinion regarding whether an employee exempt pursuant to section 13(a)(1) of the Fair Labor Standards Act (FLSA or Act) can perform additional work in a secondary, non-exempt role at an hourly rate, and if so, what, if any overtime implications arise.

It is our opinion that, under the circumstances presented, the performance of additional non-exempt work at an hourly rate is insufficient to alter the employee's exempt status under the FLSA as long as the employee's primary duty remains the performance of exempt work and the salary requirements continue to be met. As such, this arrangement does not intrinsically present overtime implications.

BACKGROUND

You represent that you are employed by an organization that is an academic medical center and operates as a non-profit acute care hospital. This hospital employs staff in various capacities, including in "Staff Nurse" and "Nursing Professional Development Specialist" (Specialist) positions.

The main functions of a Staff Nurse include formulating clinical decisions for patients utilizing a multi-dimensional plan of care with the nursing process, demonstrating respect for patient rights and privacy, serving as an advocate, assisting in orientation of new employees, and delegating tasks to other personnel. The main functions of a Specialist include identifying gaps in learning opportunities, designing educational programs, onboarding new staff, advancing the professional development of all staff, and conducting ongoing competency processes. The Specialist might perform the same interventions as a Staff Nurse, including educating and assisting the latter, but a Specialist does not replace the Staff Nurse as a patient's primary nurse. Nevertheless, a Specialist exercises significant autonomy and applies judgment on when and where to provide support to Staff Nurses.

You indicate that the employer pays Staff Nurses on an hourly basis, plus additional compensation in the form of night and weekend differentials and bonuses for picking up shifts. The employer classifies Staff Nurses as non-exempt and, as such, these employees are eligible for overtime compensation. In contrast, the employer classifies Specialists as exempt from minimum wage and overtime compensation; pays them a salary, currently approximately \$4,000 per bi-weekly pay period; and affords no additional compensation for hours worked over 40 in a workweek in the Specialist role. You explain that Specialists may, and often do, pick up shifts in the Staff Nurse role. Specialists typically pick up one, and occasionally two, 12-hour shifts as Staff Nurses per week on weekends in addition to their approximately 40 hours worked Monday through Friday in the Specialist role. Thus, these shifts typically make up about 23 percent, and occasionally about 38 percent, of the Specialists' total hours worked per week. Based on information you provided,

the employer pays Specialists an hourly rate for such additional work, and the hourly rate is approximately equivalent to the Specialist’s guaranteed weekly salary divided by 40 hours.

You ask whether an employer can employ an individual in both an exempt capacity (*i.e.*, a Specialist) and non-exempt capacity (*i.e.*, Staff Nurse). You also ask what overtime implications may arise if an individual is employed in both exempt and non-exempt roles.

GENERAL LEGAL PRINCIPLES

A. The Act

The FLSA generally requires covered employers to pay employees at least the federal minimum wage (\$7.25 an hour) for all hours worked and overtime at a rate of not less than one and one-half times the employee’s regular rate of pay for all hours worked over 40 in a workweek. *See* 29 U.S.C. §§ 206(a), 207(a). These wage and hour requirements are minimum standards, and the Act does not prohibit an employer from establishing more generous terms. *See* 29 U.S.C. § 218(a).

The FLSA includes several exemptions from its wage and hour requirements, including section 13(a)(1),¹ which exempts from both the minimum wage and overtime requirements any employee employed in a “bona fide executive, administrative, or professional capacity.” 29 U.S.C. § 213(a)(1). When construing or applying the Act, the Division must give the text a “fair ... interpretation.” *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 88–89 (2018) (cleaned up); *see also CTS Corp. v. Waldburger*, 573 U.S. 1, 12 (2014); [WHD Op. Ltr. FLSA2026-4 \(Jan. 5, 2026\)](#); [WHD Op. Ltr. FLSA2021-3 \(Jan. 15, 2021\)](#). Accordingly, WHD applies a “fair reading” standard to all FLSA provisions, including the section 13(a)(1) exemption. A fair reading is “neither narrow nor broad,” *Dep’t of Lab. v. Bristol Excavating, Inc.*, 935 F.3d 122, 135 (3d Cir. 2019), and requires the Division to “interpret each FLSA exemption the same way [it] would any other statutory provision—with full attention to its text.” *Munoz-Gonzalez v. D.L.C. Limousine Serv.*, 904 F.3d 208, 216 (2d Cir. 2018).

B. Requirements of the Section 13(a)(1) Exemption

Though the section 13(a)(1) exemption from both minimum wage and overtime pay requirements can be claimed² for any employee employed in a “bona fide executive, administrative, or professional capacity[.]” the FLSA does not define the terms “executive,” “administrative,” or “professional.” Rather, the Act directs the Secretary of Labor to define and delimit those terms. Pursuant to explicit rulemaking authority, the Secretary, through the Administrator of the Wage and Hour Division, has issued regulations to define and delimit the section 13(a)(1) exemption, including compensation and duties criteria, since 1938. *See* 29 U.S.C. § 213(a)(1); 29 C.F.R. Part 541; *see also* [3 Fed. Reg. 2518](#) (Oct. 20, 1938); Secretary’s Order 01-2014 (Dec. 19, 2024), 79 Fed. Reg. 77527 (Dec. 24, 2014).

¹ *See* section 13, subsection (a), paragraph (1) of the FLSA.

² *See* [WHD Op. Ltr. FLSA2026-1 \(Jan. 5, 2026\)](#) (explaining that even if all criteria for an FLSA exemption are met, it is the employer—not the employee—that claims the exemption).

1. Primary Duty

As explained in the regulations, for the section 13(a)(1) exemption to apply, an employee's "primary duty" must be the performance of exempt work. *See* 29 C.F.R. §§ 541.700, 541.702. The phrase "primary duty" means:

[The] principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of non-exempt work performed by the employee.

29 C.F.R. § 541.700(a).

The regulation further provides that "the amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee," and thus, an employee who spends more than 50 percent of his time performing qualifying exempt work will generally satisfy the primary duty requirement. *Id.* § 541.700(b). However, the regulation sets forth a more qualitative analysis, and thus, an employee's status cannot necessarily be inferred solely from time spent. *See id.* ("Employees who do not spend more than 50 percent of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support such a conclusion").³ Accordingly, for an employee to qualify for the exemption, "there is no strict percentage limitation on the performance of non-exempt work" as long as the employee's primary duty remains the performance of exempt work. 69 Fed. Reg. 22122, 22137 (Apr. 23, 2004).

2. Salary Basis and Level

In addition to the duties requirements, to qualify as exempt under section 13(a)(1), an employee must be compensated on a salary basis at a rate equaling or exceeding the level specified in the regulations. 29 C.F.R. § 541.602(a); *see generally* 29 C.F.R. Part 541, Subpart G.⁴ The salary basis requirement is met "if the employee regularly receives each pay period . . . a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed." 29 C.F.R. § 541.602(a). With limited exceptions, "an exempt employee must receive the full salary for any

³ *See also* 29 C.F.R. § 541.700(a) ("Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.").

⁴ The minimum salary level is \$684 per week. *See* 29 C.F.R. § 541.600 (2020); *see also* 91 Fed. Reg. 27833–27837.

week in which the employee performs any work without regard to the number of days or hours worked.” *Id.* Nevertheless, as discussed at length below, a salaried employee may receive additional compensation in most circumstances without losing the exemption, if the employee is guaranteed at least the minimum weekly-required amount paid on a salary basis. 29 C.F.R. § 541.604(a).

OPINION

Based on your representations and for present purposes, we assume that an employee working at the hospital solely as a Specialist would meet all the applicable duties, salary level, and salary basis requirements for an exempt employee pursuant to section 13(a)(1) of the FLSA and 29 C.F.R. Part 541.⁵ Likewise, we also assume an employee working at the hospital solely as a Staff Nurse would not meet any of the requirements for a section 13(a)(1) exemption and, therefore, would be non-exempt.⁶ We turn now to your question regarding the overtime implications if an otherwise-exempt Specialist performs additional, non-exempt work on an hourly basis.

A. Primary Duty Analysis

As explained above, if an employee performs work in both exempt (*e.g.*, Specialist) and non-exempt (*e.g.*, Staff Nurse) roles in the same workweek, the employee meets the duties requirements for an exemption if the employee’s primary duty remains the performance of exempt work as defined in Part 541.

Based on the circumstances you describe, when an otherwise-exempt Specialist picks up one or occasionally two shifts per week in the Staff Nurse role, the employee’s primary duty remains the performance of qualifying exempt Specialist work. In particular, the substantial majority of the employee’s time (*i.e.*, approximately 40 hours per workweek) is spent in the Specialist role, a factor that generally satisfies the primary duty requirement. 29 C.F.R. § 541.700. The fact that the Specialist only picks up one or two 12-hour Staff Nurse shifts per week on weekends as a supplement to his work as a Specialist lends further support to our conclusion that the Specialist role remains the primary duty.

The main functions of the Specialist role, such as identifying gaps in learning opportunities, designing professional educational programs, and conducting ongoing competency processes, among others—as well as possessing and, more important, exercising the autonomy, flexibility, and discretion required to perform these functions—are also factors indicating that the Specialist would continue to satisfy the primary duty requirement. This is so even though, while providing educational support to staff, the Specialist may perform some of the same tasks (*e.g.*, patient interventions) as a Staff Nurse. *See* 29 C.F.R. § 541.703 (recognizing that exempt work might include otherwise non-exempt activities when the employee is performing them because they are “directly and closely related” to the archetypal exempt work described throughout Part 541); *cf.*

⁵ As we recently explained and noted above, the employer may—but is not required to—take or claim the exemption. *See supra* note 1.

⁶ Whether a nurse meets the duties test for the learned-professional exemption will generally depend at least in part on whether the nurse is of a type whose position requires a specialized advanced academic degree as a standard prerequisite for entry into the occupation. *See* 29 C.F.R. § 541.301(e)(2).

[WHD Op. Ltr. FLSA2005-20 \(Aug. 19, 2005\)](#) (“having some employees within the same job classification who perform the same duties[,] but who are paid on a different (hourly) basis, does not affect the status of any other exempt employees paid on a salary basis.”). As a result, the employee would continue to satisfy the duties requirement for the exemption.⁷

B. Salary Level and Basis Analysis

Based on the information you provided, the Specialist’s base pay—approximately \$2,000 per week—exceeds the minimum salary-level requirement set forth at 29 C.F.R. § 541.600. In addition, we conclude that the Specialist’s base pay structure meets the salary-basis requirement set forth in 29 C.F.R. 541.602(a). Section 541.602(a) provides an employee receives a “salary” if he is paid “a predetermined amount” “on a weekly[] or less frequent basis.” 29 C.F.R § 541.602(a). The regulation requires that “[w]hen an employee works at all in a week, he must get his full salary for that week.” *Helix Energy Sols. Grp. v. Hewitt*, 598 U.S. 39, 51 (2023) (cleaned up); 29 C.F.R § 541.602(a). Here, for each week, the employee receives the full Specialist salary, regardless of hours worked, for all work performed during the week in the Specialist role. Thus, based on the facts presented, the Specialist salary appears to satisfy 29 C.F.R. 541.602(a). *See Helix*, 598 U.S. at 52 (explaining that § 541.602(a) requires “what people ordinarily think being ‘salaried’ means”).

In general, when an employer pays an employee on a salary basis under § 541.602(a), the employer may provide the employee with “*additional* compensation” without violating the salary-basis requirement, including “additional compensation based on hours worked for work beyond the normal workweek.”⁸ 29 C.F.R. § 541.604(a) (emphasis added) (providing a non-exclusive listing of examples); *see also* [WHD Op. Ltr. FLSA2020-2 \(Jan. 7, 2020\)](#) (explaining that additional payments for work performed beyond the normal workweek, such as work beyond the original scope, can be made without changing the employee’s exempt status); [WHD Op. Ltr. FLSA2005-20 \(Aug. 19, 2005\)](#) (explaining that an employer may pay exempt employees an overtime premium or shift differential pay on an hourly basis without invalidating their otherwise-exempt status). “Such additional compensation may be paid on any basis (*e.g.*, flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis).” 29 C.F.R. § 541.604(a). Thus, the additional hourly compensation that a Specialist receives for work performed while picking up

⁷ If, over time, all the work performed by an employee in both roles reflects a primary duty that, in fact, consists of activities that do not meet the duties requirements of Part 541, then the employer could not properly claim the exemption under section (a)(1) of the Act in any workweek. *See, e.g.*, [WHD Op. Ltr. FLSA2005-29 \(Aug. 26, 2005\)](#) (finding employees’ primary duty to be the performance of their full-time, non-exempt work where the employees only took on the exempt role on a part-time basis). In that scenario, overtime would be computed based on the combined total remuneration and hours for both positions in accordance with 29 U.S.C. § 207 and 29 C.F.R. Part 778.

⁸ We note that the FLSA does not *require* additional compensation beyond the predetermined salary based on the performance of additional or different work of any kind, whether voluntary or mandatory, by an employee exempt from overtime. *See, e.g.*, [WHD Op. Ltr. FLSA2005-14 \(Mar. 17, 2005\)](#).

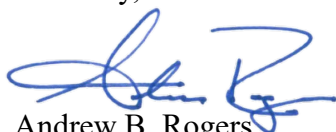
some hourly shifts as a Staff Nurse does not violate the salary basis requirement or defeat the exemption.⁹

In conclusion, an employee in the circumstances you describe remains exempt from the Act's minimum wage and overtime requirements even though the employee performs some non-exempt work and receives additional hourly compensation for such work.

This letter is an official interpretation of the governing statutes and regulations by the Administrator of the Wage and Hour Division of the United States Department of Labor for purposes of the Portal-to-Portal Act. *See* 29 U.S.C. § 259. This interpretation may be relied upon in accordance with section 10 of the Portal-to-Portal Act, notwithstanding that after any such act or omission in the course of such reliance, the interpretation is “modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.” *Id.*

We trust that this letter is responsive to your inquiry.

Sincerely,



Andrew B. Rogers
Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(6).** You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for any litigation that commenced prior to your request. 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. The existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein.

⁹ Merely because that the employer opts to derive the hourly rate for the Staff Nurse work from the Specialist's salary—that satisfies § 541.602—for purposes of computing *additional* compensation—consistent with § 541.604(a)—does not call the salary or the employee's exempt status into question. Because there is no indication that a Specialist's underlying compensation is based on an hourly, daily, or shift rate, there is no need to further assess the guaranteed salary. *See* 29 C.F.R. § 541.604(b) (requiring a “reasonable relationship” between the guaranteed amount and the amount actually earned in a typical workweek where the employee's usual earnings are computed on an hourly, daily or shift basis); *Helix*, 598 U.S. at 46–47 (explaining applicability and requirements of § 541.604(b)); *see also* [WHD Op. Ltr. FLSA2018-25 \(Nov. 8, 2018\)](#) (applying the reasonable-relationship requirement from § 541.604(b) where it was undisputed that the employer began with an hourly rate, set a guaranteed predetermined amount based on that hourly rate, and then also paid that hourly rate for all additional hours worked beyond that time); [WHD Op. Ltr. 2020-2 \(Jan. 7, 2020\)](#) (“As the employee's *underlying* compensation is not computed on an hourly, daily, or shift basis, the reasonable relationship requirement does not apply”) (emphasis added).