



FLSA2019-8

July 1, 2019

Dear **Name***:

This letter responds to your request for an opinion regarding whether a trade organization's paralegals are exempt from minimum wage and overtime requirements under Section 13(a)(1) of 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 global trade organization that employs one or more paralegals.¹ You represent that these paralegals engage in non-manual work and receive an annual salary of at least \$100,000, which includes at least \$455 per week paid on a salary or fee basis. You further represent that these paralegals, among other duties: keep and maintain records; prepare and distribute notices; prepare and submit music licensing and annual state registration reports; assist the finance department with bank account matters; assist with trademark submissions and renewals; assist with real estate matters; maintain the legal department budget; assist with annual audits; help to form new entities and maintain existing entities; prepare legal department training seminars; liaise between in-house and outside counsel; and notarize documents.

GENERAL LEGAL PRINCIPLES

FLSA Section 13(a)(1) exempts any employee employed in a bona fide executive, administrative, or professional capacity from minimum wage and overtime pay requirements. *See* 29 U.S.C. § 213(a)(1). To determine the scope of an exemption, WHD gives the statutory text a "fair (rather than a 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 qualifies for the administrative exemption if: (1) the employee is "compensated on a salary or fee basis at a rate of not less than \$455 per week";² (2) the employee's "primary duty"

¹ It is not clear whether the organization employs only one paralegal or more than one. For purposes of this letter, we have used the plural.

² The Department of Labor is undertaking rulemaking to revise the regulations in 29 C.F.R. part 541 that govern the FLSA's minimum wage and overtime exemption for executive, administrative, and professional employees. Until the Department issues its final rule, it will enforce the part 541 regulations

is “office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers”; and (3) the employee’s “primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.” 29 C.F.R. § 541.200(a) (2016).

An employee qualifies for the highly compensated exemption if: (1) the employee’s “primary duty includes performing office or non-manual work”; (2) the employee receives total annual compensation of at least \$100,000;³ and (3) the employee “customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee.” 29 C.F.R. § 541.601. To satisfy the third prong, the employee need only perform one or more exempt duties more than occasionally. 29 C.F.R. § 541.701 (noting that the duty’s “frequency ... may be less than constant”). An exempt duty is more than occasional if it is performed normally and recurrently every workweek, but not if it is an isolated or one-time task. *See id.* Additionally, this exempt duty need not be the employee’s “primary duty.” *See* 29 C.F.R. § 541.601(a)(2); *Smith v. Ochsner Health Sys.*, 353 F. Supp. 3d 483, 498 (E.D. La. 2018).

Because “[a] high level of compensation is a strong indicator of an employee’s exempt status,” the highly compensated employee exemption “eliminate[s] the need for a detailed analysis of the employee’s job duties.” 29 C.F.R. § 541.601(c); *see Hicks v. Mercedes-Benz U.S. Int’l, Inc.*, No. 7:08-cv-0536-LSC, 2012 WL 1566140, at *6 (N.D. Ala. Apr. 30, 2012) (“[T]he need to examine job duties is considerably relaxed for the highly compensated exemption”); *see also Smith*, 353 F. Supp. 3d at 497–98 (“[C]ourts, in a pre-*Encino* world, applied the exemptions narrowly against the employer ... and ignored the regulation’s directive to forego a rigorous analysis of the employee’s job duties in light of the employee’s high compensation.”).

OPINION

The paralegals that you describe in your letter appear to satisfy the highly compensated employee exemption. All of their duties are non-manual, and they receive total annual compensation of at least \$100,000. *See* 29 C.F.R. § 541.601. Additionally, as explained below, they customarily and regularly perform at least one exempt duty of an administrative employee.

As noted above, an administrative employee’s work must be “office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers.” 29 C.F.R. § 541.200(a)(2). WHD regulations give examples of such duties in an illustrative list of “work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; ... legal and regulatory compliance; and similar activities.” 29 C.F.R. § 541.201(b). The paralegals that you describe perform similar work. Your letter cites a litany of the paralegals’ job duties and

in effect on November 30, 2016, including the \$455 per week standard salary level and \$100,000 annual compensation level for highly compensated employees.

³ *See supra* note 2.

responsibilities—including keeping and maintaining corporate and official records, assisting the finance department with bank account matters, and budgeting—that are “directly related to management or general business operations.” *Id.* As such, the paralegals perform at least one of the duties of an exempt administrative employee. *See* 29 C.F.R. § 541.200(a)(2).⁴ Moreover, based on your representation that these duties are among the paralegals’ “major duties and responsibilities,” we conclude that the paralegals perform one or more of these exempt duties “customarily and regularly”—that is, more than occasionally. 29 C.F.R. § 541.701. That is enough to qualify as a highly compensated employee. 29 C.F.R. § 541.601(c) (eliminating, for highly compensated employees, “a detailed analysis of the employee’s job duties”).

It is important to note that only one of the exempt paralegals’ duties must be of an executive, administrative, or professional character, and customarily and regularly performed by the paralegals—and that one duty does not need to be the paralegals’ primary duty. “This relaxed standard applies because most of the water for the exemption is carried by the employee’s high level of compensation.” *Smith*, 353 F. Supp. 3d at 498; *see also Hicks*, 2012 WL 1566140, at *6 (“[T]he need to examine job duties is considerably relaxed for the highly compensated exemption; an employee need only perform *one or more* exempt duties customarily and regularly.”) (emphasis in original). Here, at least one of the paralegals’ duties and responsibilities is office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers (*e.g.*, budgeting, auditing, assisting with finance, and legal and regulatory compliance), and is customary and regular, thereby satisfying the final element of the highly compensated employee exemption. Accordingly, these paralegals are exempt under a “fair reading” of FLSA Section 13(a)(1), *Encino Motorcars*, 138 S. Ct. at 1142, and under the regulations currently enforced by the Department.⁵

We trust that this letter is responsive to your inquiry.

Sincerely,



Cheryl M. Stanton
Administrator

⁴ Although prior opinion letters have concluded that certain paralegals, in particular factual circumstances, do not qualify for the administrative exemption, these letters are distinguishable for two reasons. First, most of these letters relied exclusively on a finding that the primary duty of the paralegals in question did not include the exercise of discretion and independent judgment with respect to matters of significance. *See, e.g.*, WHD Opinion Letter, 2005 WL 3638473 (Dec. 16, 2005); WHD Opinion Letter, 1998 WL 852667 (Mar. 20, 1998). By contrast here, under the highly compensated employee exception, this “discretion and independent judgment” element need not be satisfied. *See* 29 C.F.R. § 541.601(a)(2). Second, the duties of the paralegals at issue here include a wide variety of administrative tasks for a trade association that are clearly directly related to the management or general business operations of the employer or the employer’s customers.

⁵ Having found that these paralegals are exempt highly compensated employees, WHD will not separately address whether they are exempt administrative employees.

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