

## **Field Service Engineers**

July 1985

This is in response to your letter of March 21 with which you enclosed copies of position descriptions for three field service engineers. You inquire as to the exempt or nonexempt status of these positions under section 13(a)(1) of the Fair Labor Standards Act (FLSA). You indicate that your company manufactures and markets laser products which are used in surgery.

The position description for field service engineer A indicates that this employee installs and services company products; provides technical support, orientation, and training to customers and new field service engineers; prepares malfunction and failure code reports; schedules service calls; and assists the design engineer with product evaluation and field trials. Field service engineer B installs and services company products; provides technical support, orientation, and training to customers; modifies installed equipment; and assists engineers in determining and solving design problems in the field. Field service engineer C installs and services company products; provides orientation and training to customers; prepares malfunction reports; modifies installed equipment; and provides preventive maintenance.

Each of the above engineers must have an Associate in Science Degree in electronics or a related field. In addition, field service engineer A is required to have from 5 to 6 years of field service experience (with 3 to 4 years in medical systems); field service engineer B is required to have from 2 to 3 years of field service experience with medical products; and field service engineer C is required to have from 1 to 2 years of field service experience with medical products. In a May 2 telephone conversation with a member of my staff, you indicated that the engineers are paid on a salary basis in excess of \$250 per week and that none of them has supervisory responsibilities.

We have considered your inquiry under the provisions of the FLSA, which is the Federal law of most general application concerning wages and hours of work. The Act requires that all covered and nonexempt employees be paid a minimum wage of at least \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

Section 13(a)(1) of the FLSA provides a minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in the enclosed copy of Regulations, 29 CFR Part 541. In order to qualify for exemption under this section, an employee must meet all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in the appropriate section of the regulations. A determination of the exempt or nonexempt status of any employee must be made on an individual basis that takes into consideration all of the pertinent facts relating to the actual work performed by the employee in question and not on the employee's job title or content of the position description. The regulations contain special provisos for those exempt employees who are paid on a salary basis of at least \$250 per week.

Based on our review of the information provided and that obtained from you in a telephone conversation with a member of my staff, it is our view that the field service engineers you have

in mind would not qualify as bona fide executive employees since they do not supervise two or more full-time employees. Nor do these employees have management as their primary duty (see section 541.1(a) of the regulations).

With respect to the exemption for administrative employees, it does not appear that the subject employees exercise discretion and independent judgment within the meaning of section 541.207 of the regulations. The term “discretion and independent judgment” implies that the person in question has the authority or power to make independent choices free from immediate direction or supervision, and with respect to matters of significance. It is our position that work which consists of the performance of installation repair, and/or operation of electronic or industrial equipment does not involve the use of discretion and independent judgment within the meaning of the regulations. The fact that the field service engineers may demonstrate such techniques to customers of the manufacturer does not change this conclusion.

It is also our view that the above employees would not qualify for exemption as bona fide professional employees since their primary duty does not consist of the performance of work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as required by Section 541.3(a)(1) of the regulations. A “prolonged course of . . . study” has generally been defined to mean at least a baccalaureate degree or equivalent which includes a longer intellectual discipline in a particular course of study as distinguished from a general academic course otherwise required for a baccalaureate degree.

It is our opinion that the above employees are best characterized as highly skilled technicians who are nonexempt under section 13(a)(1) of the FLSA. Therefore, all of the employees must be paid in accordance with the minimum wage and overtime pay provisions of the Act.

We trust that the above information is responsive to your inquiry. If we can be of further assistance, please let us know.

/s/ Herbert J. Cohen  
Deputy Administrator