

2000 WL 34444354 (DOL WAGE-HOUR)

Wage and Hour Division  
United States Department of Labor

Opinion Letter Fair Labor Standards Act (FLSA)

July 14, 2000

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This is in reply to your letter requesting an opinion as to whether **field service** technicians are professional or administrative employees within the meaning of section 13(a)(1) of the Fair Labor Standards Act (FLSA) and Regulations, 29 CFR Part 541.

You indicate the **field service** technicians are employed by your client whose business involves designing, **engineering**, manufacturing, selling, and shipping large scale conveyor belts and systems. The technicians travel throughout the USA to troubleshoot problems involved with the systems, and work in the corporate office resolving issues and problems via telephone. The technicians are provided intense, specialized in-house training at the corporate headquarters. They must be able to make independent decisions involving problem solving and repair of the equipment. The technicians are paid hourly during the training period, and a salary of approximately \$800 per week when converted to an exempt status.

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, professional, or outside sales capacity, as those terms are defined in Regulations, 29 CFR Part 541 (copy enclosed). In order to qualify for exemption under section 13(a)(1), an employee must meet all the pertinent tests relating to duties, responsibilities and salary, as discussed in the appropriate section of the regulations.

An employee who is paid on a salary or fee basis of at least \$250 per week may qualify for exemption as a bona fide professional employee, if the employee's primary duty consists of the performance of work described in section 541.3(a)(1), which includes work requiring the consistent exercise of discretion and judgment. In accordance with section 541.3(a)(1), such primary duty must consist of work requiring knowledge of an advanced type in a **field** of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, an apprenticeship, and training in the performance of routine mental, manual, or physical processes.

A "prolonged course of ... study" has generally been held to include only those employees who have acquired at least a baccalaureate degree or its equivalent which includes an intellectual discipline in a particular course of study as opposed to a general academic course otherwise required for a baccalaureate degree. Work which can be performed by employees with education and training which is less than that required for a bachelor's degree would not be work of a bona fide professional level within the meaning of the regulations.

Based on the information provided, it is our opinion that the **field service** technicians 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 advanced 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.

An employee who is paid on a salary or fee basis of at least \$250 per week may qualify for exemption as a bona fide administrative employee if the employee's primary duty is office or nonmanual work directly related to management policies or general business operations of his/her employer or his/her employer's customers, and whose work requires the customary and regular exercise of discretion and judgment in its performance. The exercise of discretion and independent judgment (section 541.207), generally, involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after various possibilities have been considered. The term implies that the person has the authority or power to make independent choice, free from immediate direction or supervision and with respect to matters of significance. An employee who merely applies his/her knowledge in following prescribed procedures or determining which procedure to follow, or who determines whether an object falls into one or another of a number of definite grades, classes, or other categories is not exercising discretion and independent judgment within the meaning of section 541.2, even if there is some leeway in reaching a conclusion.

It has been our long-standing position that **service** employees and repair technicians, such as the **field service** technicians, do not qualify for **exemption** as bona fide administrative employees. Work which consists of the installation, diagnosis, and repair of equipment would not involve the use of discretion and independent judgment within the meaning of the regulations. Such employees are using skills and procedures or techniques acquired by special training or experience. Their duties do not involve, with respect to matters of significance, the comparison and evaluation of possible courses of conduct and the making of decisions after the various possibilities have been considered. It is our opinion that the **field service** technicians are best characterized as highly skilled technicians and would not qualify as **exempt** administrative employees within the meaning of the regulations.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit 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. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed therein.

We trust the above information is responsive to your inquiry.

Sincerely,  
Daniel F. Sweeney  
Office of Enforcement Policy  
Fair Labor Standards Team

Enclosure

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