

Applying Section 13(a)(1) to administrative positions

The Fair Labor Standards Act's (FLSA) Section 13(a)(1) exemption can sometimes be difficult to apply. It provides a complete minimum wage and overtime exemption for any employee employed in a bona fide executive, administrative, or professional capacity, under certain conditions.

In a recent opinion letter, the Department of Labor (DOL) addressed a job description that had the following elements:

- data entry for accounts payable and receivable, with no signing authority
- modifying account names/attributes in Quickbooks for improved job costing/profit accounting at year end
- word processing for job contracts, lien waivers, letters, and labels
- sending notices to subcontractors regarding updating their workers' compensation/liability insurance
- maintaining a paper file for each subcontractor
- receptionist duties such as answering phones and signing for packages
- ordering routine office supplies

Bona Fide Administrative Capacity

The term "employee employed in an administrative capacity" in Section 13(a)(1) means any employee: "(1) compensated on a salary or fee basis of at least \$455 a week; (2) whose primary duty is the performance of

office or non-manual work directly related to the management or business operations of the employer or the employer's customers; and (3) whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance."

DOL's Decision

The DOL said that the job description described at the left does not meet the primary duty test for the administrative exemption. It appears that the employee did not have the authority to make independent choices, free from immediate direction and supervision. The employee is performing duties that involve clerical or secretarial work that is repetitive and routine. The regulations clarify that such work does not qualify for the administrative exemption.

This particular employee is covered by the minimum wage and overtime provisions of the FLSA. The FLSA requires that all covered and non-exempt employees be paid at least the hourly minimum wage and overtime pay for all hours worked over 40 in a workweek.

For more information, contact CTSI at 303-861-0507 or visit the Department of Labor's website at www.dol.gov.

County Technical Services, Inc.

800 Grant St., Suite 400
Denver CO 80203

303.861.0507
FAX: 303.861.2832

Technical Updates are available online at: www.ctsi.org