U.S. Department of Labor Wage and Hour Division
Washington, D.C. 20210

FLSA2026-1

January 5, 2026

Dear **Name***:

This letter responds to your request for an opinion regarding your reclassification from exempt to non-exempt status despite your belief that you continue to satisfy the educational and job duties criteria of an exempt "learned professional" under section 13(a)(1) of the Fair Labor Standards Act (FLSA or Act).

It is our opinion that, under the circumstances presented, the discontinuation of supervisory responsibilities would not preclude your classification as an exempt learned professional, although your change from being paid on a salary basis to being paid on an hourly basis would likely defeat the exemption. Moreover, even if you do meet the tests for the learned professional exemption, your employer may nonetheless choose to classify you as non-exempt.

BACKGROUND

You represent that you are employed as a Licensed Clinical Social Worker (LCSW) for a healthcare organization. Since receiving your professional license in 2018, you state that your employer has classified you as a "salaried (exempt)" employee.[1] You assert that your core job duties include: clinical assessments and psychosocial evaluations; treatment planning and documentation; participation in interdisciplinary care teams; crisis intervention and discharge planning; and consistent application of professional discretion and judgment in clinical decisions. In 2020, you became a supervisor and assumed supervisory responsibilities.

You state that your employer has recently undergone an internal restructuring and advised that you would be reclassified to "hourly (non-exempt)," and that your supervisory role will be discontinued. Consequently, you state that your employer has decided to reclassify your position from exempt to non-exempt on the basis that you are no longer a supervisor. You assert that your role continues to be clinical and aligned with the FLSA's exemption for learned professionals, as defined in 29 C.F.R. § 541.301. Although you have not provided any information on the academic prerequisites for your position, you state that you are a LCSW in the state of Utah, which we note requires a master's or doctoral degree in social work to qualify for professional licensure. *See* Utah Code Ann. § 58-60-205(1)(c).

[1] Although employees and employers often use the terms "salaried" and "exempt" interchangeably, they are not synonyms. Payment on a salary basis alone does not make an employee exempt from the minimum wage or overtime provisions of the Act; an employee also generally must meet a salary level test and meet various duty requirements. Indeed, while the FLSA's exemption for learned professional employees generally requires that exempt employees receive a salary, not all exemptions do. Moreover, the Act does not prohibit paying non-exempt employees a salary, as long as the proper overtime premium is also paid.

You have asked the Division to address whether your role meets the criteria for the FLSA's learned professional exemption and, if so, whether your employer is nevertheless permitted to pay you on an hourly basis and reclassify you as a non-exempt employee.

GENERAL LEGAL PRINCIPLES

The FLSA generally requires covered employers to pay employees at least the federal minimum wage (currently $7.25 an hour) for all hours worked and overtime premium pay of at least 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, a federal floor, and the Act does not prohibit an employer from paying more than the federal minimum wage or establishing a more generous policy for overtime pay. *See* 29 U.S.C. § 218(a).

The Act includes numerous exemptions from its wage and hour requirements. Of relevance to your request, section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay requirements for any employee employed in a "bona fide executive, administrative, or professional capacity." 29 U.S.C. § 213(a)(1). Regulations which define and delimit these exemptions are set forth at 29 C.F.R. Part 541, including compensation and duties criteria for exempt "learned professionals" in Subparts D and G.

The learned professional exemption requires that the employee's "primary duty" must involve the performance of "work requiring advanced knowledge" "in a field of science or learning" which is "customarily acquired by a prolonged course of specialized intellectual instruction." 29 C.F.R. § 541.301(a). By contrast, the "executive employee" exemption applies to those who customarily and regularly direct the work of two or more other full-time employees or their equivalent, among other requirements. *See* 29 C.F.R. §§ 541.100, 541.104.

OPINION

Based on the facts provided in your letter, it is likely that your primary duty necessitates the requisite advanced knowledge and academic requirements to qualify you as an exempt learned professional. 29 U.S.C. § 213(a)(1). WHD has previously explained that "Social Workers with master's degrees who work in the field of their degree[] will generally meet" the duties requirements for exemption, WHD Opinion Letter FLSA2005-50 (Nov. 4, 2005), and we assume, based on licensing requirements for LCSWs in your state (Utah), that your professional license similarly requires that you hold at least a master's degree in a relevant field. *Cf. Solis v. Washington*, 656 F.3d 1079, 1088 (9th Cir. 2011) (holding that "[a]n educational requirement that may be satisfied by [bachelor's] degrees in fields as diverse as anthropology, education, criminal justice, and gerontology" was not "sufficiently specialized and relate[d] directly" to the social work positions at issue for purposes of the learned professional exemption). Notably, the possession of a professional license and master's degree does not alone establish that you are an exempt learned professional; additionally, as part of your primary duty, you must perform work requiring that advanced knowledge. *See* 29 C.F.R. § 541.301(a)(1), (b). It appears from the description of your core job duties—*e.g.*, making clinical assessments and psychosocial evaluations, planning treatments, participating in interdisciplinary care teams, among others—that you are performing work which requires your advanced knowledge "in a field of science or learning."

However, for the learned professional exemption to apply, an employee must additionally meet the compensation requirements. *See* 29 C.F.R. §§ 541.300(a); 541.600; 541.602. Based on your letter, we have assumed that your prior pay structure met the compensation requirements set forth in detail at 29 C.F.R. §§ 541.600 and 541.602.[2] But if, as your letter suggests, your compensation has changed to hourly, you would likely no longer meet the compensation criteria, and would no longer qualify for the exemption, even if your duties remain the same. Your letter does not contain enough information about your compensation to determine whether these requirements are met.[3]

Ultimately, even if all the criteria for an FLSA exemption are met, it is the employer—not the employee—that claims the exemption. In other words, the Act does not require an employer to classify as exempt an employee who meets the requirements of an exemption. Rather, employers have the discretion to classify such employees as non-exempt as long as they pay at least the federal minimum wage for all hours worked and the overtime premium for work in excess of 40 hours in a workweek. Employers may decide not to classify any qualified employees as exempt or only a subset of employees (including managers, particular grades or compensation levels, corporate office location, and others). Please note that, although non-exempt employees are subject to certain recordkeeping requirements which do not apply to exempt individuals employed in an executive, administrative, or professional capacity, *see* 29 C.F.R. § 516.3, an employer may decide to provide its non-exempt employees with pay structures, employment benefits, and scheduling flexibility similar to those it provides to its exempt employees.

Finally, you also ask whether your employer is permitted to reclassify an exempt employee as non-exempt solely due to a change in organizational structure. The FLSA only prohibits the misclassification of a non-exempt employee as an exempt one. Thus, employers can and do make lawful business decisions to not apply an exemption. There is no indication based on the facts provided that this action violates the Act, assuming that your wages were calculated properly for the workweek in which the transition occurred. Although your employer retains the prerogative to classify you as a non-exempt employee, the analysis above may help you in discussing the nature and terms of your employment with your employer.

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.*

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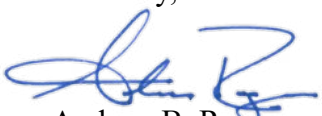
[2] Please note that due to ongoing litigation concerning an update to the salary level test issued in 2024 that was subsequently vacated, *see Texas & Plano Chamber of Commerce v. U.S. Dep't of Labor*, 756 F. Supp. 3d 361 (E.D. Tex. 2024), the Department is currently enforcing a $684 per week salary level requirement.

[3] To satisfy the learned professional exemption, an employer must pay the employee at or above the regulatory threshold (referenced above) on a "salary basis," defined at 29 C.F.R. § 541.602, a "fee basis," defined at 29 C.F.R. § 541.605, or a time-based rate that includes a minimum guarantee that bears a reasonable relationship (*e.g.*, a ratio of 1.5-to-1 or less) to the employee's usual time-based earnings. *See* 29 C.F.R. § 541.604(b); WHD Opinion Letter FLSA2018-25 (Nov. 8, 2018) (stating that a ratio of 1.8-to-1 is impermissible).

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.