

FLSA - DEFINITIONS AND MISCELLANEOUS ISSUES

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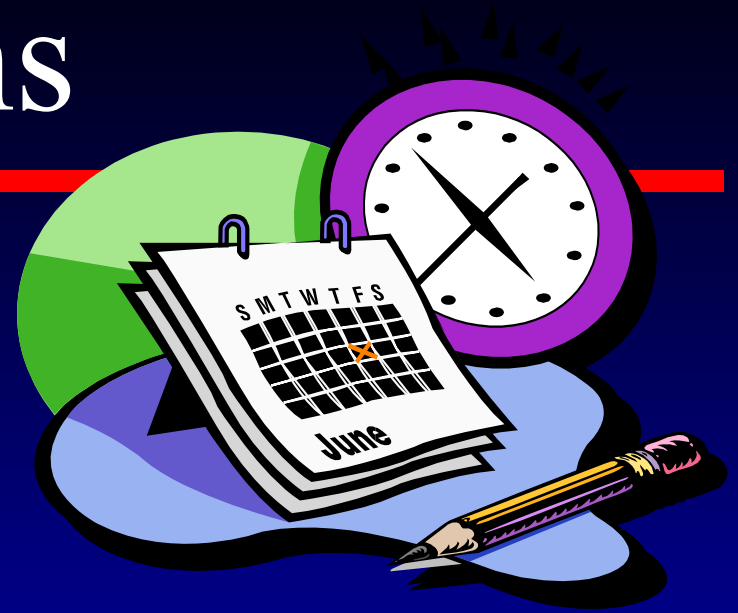
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Final Regulations



- ▶ Published April 23, 2004
- ▶ **Effective** August 23, 2004

Management - § 541.102

- ▶ Management includes, but is not limited to:
 - ▷ **Interviewing, selecting and training** employees;
 - ▷ **Setting** rates of pay and hours of work;
 - ▷ **Directing** and **appraising**;
 - ▷ Handling employee **complaints** and **grievances**;
 - ▷ **Determining** techniques to be used;

Management - § 541.102

- ▶ Management **also includes**:
 - ▷ Apportioning work;
 - ▷ **Disciplining** employees;
 - ▷ Determining materials, supplies, machinery and tools to be used;
 - ▷ **Providing for safety** of employees or the property;
 - ▷ Planning and controlling the **budget**;
 - ▷ Monitoring or implementing legal compliance measures.

Department or Subdivision

§541.103

- ▶ A customarily recognized department or subdivision must have a **permanent status** and a **continuing function**.
- ▶ For example – HR department may have subdivisions of employee benefits; labor relations, pensions, etc.
 - ▷ Each has a permanent status and function

Department or Subdivision

§541.103

- ▶ If business has **more than one establishment**, the employee in charge of each may be considered in charge of a recognized subdivision of the establishment.
- ▶ **Need not be physically within** the employer's establishment.
- ▶ Continuity of same personnel is **not required**.

Primary Duty - § 541.700

- ▶ The **principal, main, major or most important duty** performed by employee.
- ▶ Factors to consider include:
 - ▷ **Relative importance** of the exempt duties;
 - ▷ **Amount of time** spent performing exempt work;

Primary Duty - § 541.700

- ▶ Factors to consider also include:
 - ▷ **Freedom** from direct supervision;
 - ▷ Relationship between the employee's salary and the wages paid to other employees for the **same kind of nonexempt work.**

Primary Duty - § 541.700

- ▶ Employees who spend **more than 50% of their time** performing exempt work will generally satisfy the primary duty requirement.
- ▶ Regulations **do not require** that exempt employees spend more than 50% of time performing exempt work.

Primary Duty - § 541.700

- ▶ **Assistant retail managers** who perform exempt work such as supervising and directing others may spend 50% of time doing nonexempt work, such as running the cash register.
- ▶ If the assistant managers are **closely supervised** and **don't earn much more** than nonexempt employees, they would **not satisfy** the primary duty requirement.

Customarily and Regularly (§541.701)

- ▶ Refers to frequency that must be **greater than occasional**, but less than constant.
- ▶ Includes work normally performed **every workweek**.
- ▶ Does **not** include isolated or one-time tasks.

Exempt and Nonexempt Work (§541.702)

- ▶ Exempt work refers to all work described in §§ 541.100, 541.101, 541.200, 541.300, 541.301, 541.302, 541.303, 541.304, 541.400 and 541.500;
- ▶ And the activities directly and closely related to such work.
- ▶ **All other work is considered nonexempt.**

Directly and Closely Related (§541.703)

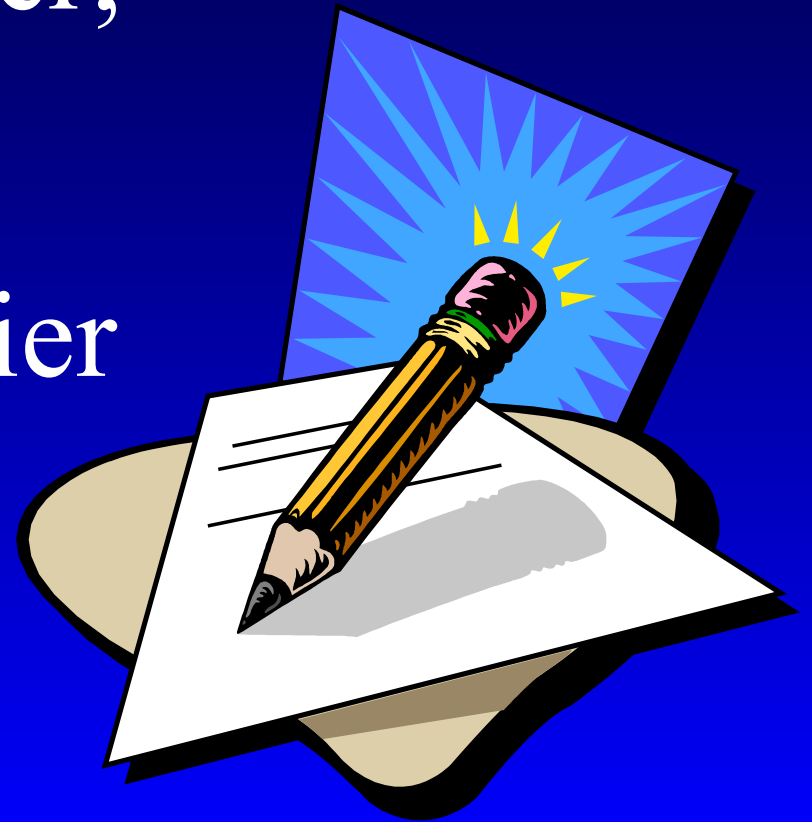
- ▶ Work that is **directly and closely** related to the performance of exempt work is also considered exempt work.
- ▶ Refers to tasks that are related to exempt duties and **contribute to or facilitate performance** of exempt work.

Directly & Closely Related Tasks (§541.703)

- ▶ May include physical tasks and menial tasks **arising out of exempt duties.**
- ▶ May include recordkeeping, monitoring and adjusting machinery;
- ▶ Taking notes;

Directly & Closely Related Tasks (§541.703)

- ▶ Using the computer;
- ▶ Opening mail;
- ▶ Using a photocopier or fax machine.



Directly & Closely Related Tasks (§541.703)

- ▶ Work is *not* directly and closely related if the work is **remotely related** or **completely unrelated** to exempt duties.

Use of Manuals (§541.704)

- ▶ Exempt employees **may use** manuals, guidelines or other established procedures if they:
 - ▷ Contain or relate to highly technical, scientific, legal, financial or other similarly **complex matters**;
 - ▷ Can be understood or interpreted only by those with **advanced or specialized** knowledge or skills.

Use of Manuals (§541.704)

- ▶ Employees are **not exempt** if they use manuals to apply well-established techniques or procedures within closely prescribed limits.



Trainees (§541.705)

- ▶ Executive, administrative, professional, outside sales and computer exemptions **do not apply** to employees who are **training, but not actually performing**, those duties.

Emergencies (§541.706)

- ▶ An exempt employee **will not lose** the exemption by doing nonexempt work due to an emergency.
- ▶ Emergency refers to:
 - ▷ Threats to the **safety** of employees;
 - ▷ **Cessation** of operations;
 - ▷ **Serious damages** to employer's property.

Emergencies (§541.706)

- ▶ Emergencies do not include occurrences not beyond control or for which the employer can **reasonably provide** in the normal course of business.
- ▶ **Emergencies are rare occurrences.**

Occasional Tasks (§541.707)

- ▶ Occasional, infrequent tasks that **cannot be performed by nonexempt employees**, but are the means for an exempt employee to properly carry out exempt duties are **considered exempt work.**

Occasional Tasks (§541.707)

- ▶ Consider the following factors:
 - ▷ Whether the same work is performed by the exempt employee's **subordinates**;
 - ▷ Whether the work can be **delegated**;
 - ▷ Whether the work is performed **frequently or occasionally**;
 - ▷ **Industry practice** that exempt employee performs the work.

Combination Exemptions (§541.708)

- ▶ Employees performing **combination of exempt duties** of executive, administrative, professional, outside sales and computer employee **may qualify** for exemption.
- ▶ Work exempt under one section **will not defeat** the exemption under any other section.

Furlough



- ▶ Budget required furlough will **not disqualify** otherwise exempt employee – **except** for the workweek where employee's pay is reduced.

Kearney v. Town of Wareham (2002)

- ▶ No **retaliation** found where officer was fired shortly after filing a personal overtime claim and filing claims as union steward.
- ▶ Town had **sufficient due process** to prevent retaliation.

O'Brien v. Encotech (2002)

- ▶ Agreements signed by construction workers **releasing employer** from liability under the FLSA and state wage laws violated public policy.
- ▶ Construction workers **may not waive** rights under FLSA and release employer from liability.

Fact Sheet

- ▶ Department of Labor's Fact sheet –
 - ▷ <http://www.dol.gov/esa/regs/compliance/whd/fairpay>

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