

2006 WL 2158424 (DOL WAGE-HOUR)

Wage and Hour Division

United States Department of Labor

Opinion Letter Fair Labor Standards Act (**FLSA**)

FLSA2006-23

June 29, 2006

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*1 This is in response to your letter inquiring whether Acquisition Agents, Relocation Agents, and Property Management Agents for a land-acquisition service firm are exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act (**FLSA**) as administrative employees under section 13(a)(1). It is our opinion that the three categories of employees qualify as administrative employees.

Your client is a land-acquisition service that assists government agencies in the acquisition of property for public works projects such as airports, highways and rapid transit systems. The employees assist the government agencies in complying with federal funding requirements relating to eminent domain that require public agencies to acquire real property fairly, expeditiously, and cost effectively, and to ensure that displaced persons do not suffer disproportionate injuries as a result of the public works. Many of the employees in question hold real estate licenses and/or possess a baccalaureate degree in real estate or law-related studies. You state that the employees fulfill the minimum salary requirements for exemption and are paid on a salary basis. See **29 C.F.R. § 541.600** (copy enclosed).

Acquisition Agents - Your client employs several Acquisition Agents (AAs) to perform various tasks relating to the acquisition of property for the employer's clients. The AAs are responsible for purchasing the property by negotiating with the property owners, analyzing property appraisals, and making recommendations to the client using real estate practices, legal concepts, governmental standards, and regulations. The AAs represent the client in negotiations with the property owners and attorneys. They regularly recommend to the client whether a reasonable compromise is likely and further negotiations should be pursued, or whether to pursue condemnation litigation. If the property owner has a legitimate basis for seeking a substantially higher amount, the employees can recommend such increases to the client. If the negotiation process fails, the AAs prepare the lawsuit packages for condemnation proceedings, assist the client's attorney, and serve as an expert witness in mediation or trial. The AAs are also responsible for preparing for the real estate closing, including preparing closing documents.

Relocation Agents - Relocation Agents (RAs) assist in property appraisal and provide relocation assistance to the owners and tenants of the property purchased by the client. The RAs evaluate

possible replacement properties and make recommendations as to the amount of the "replacement housing payment" to be paid to the displaced property owner. The RAs conduct research and analyze the best options for the property owners. They also analyze possible alternative properties under federal law. The RAs provide advice to the property owner on the moving process and any relocation assistance that might be available to them. The RAs can also make recommendations to the client to offer additional payments to the property owner or to extend the occupancy period given to the displaced property owner. They represent the client in appeals of the relocation payment amount, serving as expert witnesses in administrative appeals and/or in litigation. Where the tenant of the property is a business, the proceedings can be especially complicated because there often is tenant-installed equipment or machinery and/or significant build-outs by the tenant. In such cases, the relocation benefits can be as much as a million dollars, and RAs have saved clients hundreds of thousands of dollars at a time in appeals of business relocation payments. The RAs also assist the property owner in preparations for the property closing.

*2 Property Management Agents - The Property Management Agents (PMAs) serve as spokespersons and representatives of the client. They are responsible for dealing with governmental authorities, utility companies, contractors and other consultants during the conversion of the property for public use. They are responsible for contacting and developing rapport with

various local officials and explaining the project in order to develop good relationships and ensure compliance with the law. Additionally, they must protect the client's investment by working with the officials to keep the property safe from possible vandals and by making police reports in the event of vandalism. The PMAs work with environmental consultants to address environmental issues such as the presence of asbestos and to ensure compliance with environmental protection laws. The PMAs coordinate all of their work and develop an Operations and Maintenance Plan to ensure that the consultants and contractors follow proper procedures. The PMAs also coordinate and direct the demolition of the property, including preparing detailed specifications prior to the bidding, advertising for bids, and conducting pre-bid meetings to explain the project prior to accepting bids for the demolition work. They have authority to use their knowledge and experience with contractors to select preferred contractors from an approved list or to shop for the best price for the work. After selection, the PMAs oversee and evaluate the work of all contractors.

Please note that the Department issued revisions to the Part 541 regulations exempting certain executive, administrative, and professional employees and these revisions were published as a final rule in the Federal Register on April 23, 2004 ([69 Fed. Reg. 22122](#)). The revised Part 541 regulations went into effect on August 23, 2004. We have answered your letter based on the new regulations.

Under the Department's regulations, an exempt administrative employee is an employee:

- (1) Compensated on a salary or fee basis at a rate of not less than \$455 per week . . . ;
- (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general 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.

[29 C.F.R. § 541.200\(a\)](#) (copy enclosed). The regulations define "primary duty" as "the principal, main, major, or most important duty that the employee performs." [29 C.F.R. § 541.700\(a\)](#) (copy enclosed).

To qualify for the administrative exemption, an employee's primary duty must be "directly related to management or general business operations." This "refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment." [29 C.F.R. § 541.201\(a\)](#) (copy enclosed). Work that is "directly related to management or general business operations includes":

*3 work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities.

[29 C.F.R. § 541.201\(b\)](#). Additionally, as described in [29 C.F.R. § 541.201\(c\)](#), an employee who performs "work directly related to the management or general business operations of the employer's customers" qualifies for the exemption. The fact that the work is performed for the employer's government clients, rather than the employer, does not affect the employee's exemption status. [29 C.F.R. § 541.201\(c\)](#).

Furthermore, the employee's primary duty must involve the exercise of discretion and independent judgment as to significant matters. The regulation gives guidance on what may be considered the exercise of discretion and independent judgment. *See* [29 C.F.R. § 541.202](#) (copy enclosed). In determining whether the employee's work meets this threshold, factors to consider "include, but are not limited to":

whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the

business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

29 C.F.R. § 541.202(b).

Additionally, **29 C.F.R. § 541.203** (copy enclosed) lists several examples of jobs and duties that generally fulfill the requirements for the administrative exemption. Included in the list of exempt jobs are insurance claims adjustors, whose duties include inspecting property damage, evaluating and making recommendations regarding coverage of claims, negotiating settlements, and making recommendations regarding litigation, and purchasing agents, who have the ability to bind the company on significant purchases. **29 C.F.R. § 541.203**. This list also includes examples of jobs and duties that do not generally qualify for exempt status because they do not fulfill all the requirements of the exemption. *Id.* These nonexempt positions include ordinary inspection work and public sector inspectors and investigators whose job duties do not involve the exercise of discretion and independent judgment; rather, their work involves the use of technical skills and well-established techniques and procedures. *Id.*

***4 Acquisition Agents:** Based on the facts you have provided, the Acquisition Agents qualify for the administrative exemption. The type of work performed by the AAs is directly related to the general business operations of the employer's clients. As noted in **29 C.F.R. § 541.201(b)**, work in the functional areas of purchasing, procurement, and legal and regulatory compliance qualifies as work that is directly related to management or general business operations. Additionally, the many responsibilities of the AAs meet the discretion and independent judgment standard. The AAs interpret management policies, negotiate, consult with and provide expert advice to management, and bind the client financially on significant matters, as discussed in several of the factors found in **29 C.F.R. § 541.202(b)**. *See* Wage and Hour **Opinion Letter** May 14, 1980 (copy enclosed). Furthermore, the AAs are similar to the insurance claims adjustors listed as exempt in **29 C.F.R. § 541.203**, because they are responsible for inspecting and determining the value of property including unique real property, negotiating settlements, and making recommendations regarding litigation when necessary.

Relocation Agents: Similarly, the Relocation Agents qualify for the administrative exemption. The type of work performed by the RAs is directly related to the general business operations of the employer's clients. Like the AAs, the RAs work in the functional areas of procurement, government relations, and legal and regulatory compliance, which are management and general business operations functions. **29 C.F.R. § 541.201(a)**. The RAs exercise discretion and independent judgment as to significant matters by analyzing housing alternatives, recommending "replacement housing payments," and advising the client on significant financial matters. **29 C.F.R. § 541.202(b)**. The RAs are also similar to the insurance claims adjustors listed as exempt in **29 C.F.R. § 541.203** because they are responsible for inspecting property, evaluating and making recommendations regarding the "replacement housing payment," negotiating settlements with property owners, and representing management in any appeals.

Property Management Agents: The Property Management Agents are also exempt administrative employees. A PMA's primary duty of serving as a liaison between the client and various government agencies qualifies as management and general business operations because it involves government relations and legal and regulatory compliance. In addition, their work during the bid process and in the selection of contractors relates to purchasing and procurement, and their oversight activities involve quality control. The PMAs implement management policies, carry out major assignments, and negotiate on behalf of the company on significant matters, thereby fulfilling the exercise of discretion and independent judgment requirement. **29 C.F.R. § 541.202(b)**.

Therefore, it is our opinion that the Acquisition Agents, Relocation Agents, and Property Management Agents qualify as exempt administrative employees and are exempt from the minimum wage and overtime requirements of the **FLSA** pursuant to section 13(a)(1).

*5 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. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

Enclosures: **29** C.F.R. § 541.200-.203 **29** C.F.R. § 541.600 **29** C.F.R. § 541.700

Wage and Hour **Opinion Letter** May 14, 1980

Footnotes

a1 Note: The actual name(s) was removed to preserve privacy in accordance with **5 U.S.C. 552 (b)(7)**.
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