

DOL Issues Opinion Letters on FLSA Exempt Status and Ministerial Exception

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The U.S. Department of Labor (DOL) issued two opinion letters addressing whether an employer properly classified account managers as exempt from overtime pay and whether a private religious day care can pay its teachers on an exempt salary basis under the ministerial exception.

DOL opinion letters describe how the agency would enforce statutes and regulations in specific circumstances presented by an employer, worker or other party who requests the opinion. Opinion letters are not binding, but there may be a safe harbor for employers that show they relied on one.

Administrative Exemption

In the first opinion letter (https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2021_01_08_01_FLSA.pdf), the DOL addressed whether account managers at a life-science products manufacturer qualify for the Fair Labor Standards Act's (FLSA's) administrative exemption from overtime pay.

Under the FLSA, workers must be paid 1 1/2 times their regular rate of pay for all hours worked beyond 40 in a workweek unless they fall under an exemption. The most commonly used exemptions are the administrative, executive and professional, collectively called white-collar exemptions.

To qualify for these exemptions, employees must be paid a salary of at least \$684 a week (\$35,568 annualized) and perform certain duties. Under the administrative exemption, the employee's primary duty must be performing office or nonmanual work that is directly related to the management or general business operations of the employer or the employer's customers. The employee's primary duty also must include the exercise of discretion and independent judgment (https://www.dol.gov/whd/overtime/fs17c_administrative.pdf) with respect to matters of significance.

The party that requested the opinion letter noted that the relevant account managers:

- Earn a base salary between \$60,000 and \$90,000.
- Have a bachelor's degree in a life science (such as biology, biotechnology or chemistry) or a bachelor's degree in business and at least five years of experience in the life-science industry.
- Consult with customers that are highly trained scientists.
- Learn about the scientists' needs, research the company's products and communicate how the products fit the scientists' needs.
- Are given autonomy and are not closely monitored.
- Do not follow a script.
- Make independent decisions in answering questions and explaining product benefits.
- Create product solutions and work with clients to develop scientific protocols for use of the equipment.

Based on the information provided, the DOL concluded that the account managers qualify for the administrative exemption.

The DOL noted that the account managers develop relationships with target customers, get to know the customers' business needs and serve as a conduit for technical scientific customer information. "The broad discretion given to account managers in targeting and working with potential customers supports that the account managers are the point of contact between any potential customers and the company," the department said.

The account managers also practiced discretion and independent judgment with respect to matters of significance. They "are given wide latitude in promoting and marketing products, designing portfolios of products and solutions for potential clients, advising potential and prospective clients, and performing other consultative or servicing activities in support of a prospective or current client's use of the employer's products," the DOL noted in support of its conclusion.

"Employers reading this just-issued opinion regarding specialized account managers need to focus on the key facts presented, including that these account managers did more than just 'sell' in the traditional sense," said Kathleen Anderson, an attorney with Barnes & Thornburg in Fort Wayne, Indiana. She said the nuances are important: The employees developed relationships with target customers, had broad discretion in those relationships and served as principal contact points with the company.

"In the scenario presented, the specialized account managers have considerable independence and discretion and appear pivotal in the relationship," she observed. "All account managers may not line up the same way in the analysis."

Ministerial Exception

In a second opinion letter (["There is no rigid formula for determining who qualifies for the exception, but an employee need not be ordained or have a particular job title to qualify," noted Allan Bloom, an attorney with Proskauer in New York City. "To the contrary, employees qualify based on their role in conveying the organization's message and carrying out its religious mission, a determination that must be made on a case-by-case basis."](https://urldefense.proofpoint.com/v2/url?u=https-3A__lnks.gd_l_eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbI9saW5rX2lkjoxMDIsInVyaSI6ImJwMjpbGjJaylsmJ1bGxldGluX2lkjoiMjAyMTAxMDguMzI5OTYxMzEiLCJ1cmwiOiJodHRwczovL3d3dy5kb2wuZ292L3NpdGVzL2RvGdvdi9maWxlcj9XSEQvbGVnYWN5L2ZpbGVzLzlwMjFfMDdfMDhfMDJfRkxTQS5wZGYifQ.iHFHxTkmmEuBZ6zJBgDYEBrek3eFrDw4-2DXRw6NDI4d4_s_60520516_br_92844983769-2DI&d=DwMFAA&c=nQOnw6HHAeKBXj23OXhOw&r=weNCOuT-3hgdxQY8oxCZ9w&m=Kza3KgyKfoQq917c-QUEUNa7xQHnareXX2VeyJtlgvu4&s=2Gs95GYiiOZasx4RvQ0gsljtkAMCbbI9Z5vNJ7cXuZw&e=), the DOL addressed whether the FLSA's ministerial exception allows a private religious day care to pay teachers on an exempt salary basis, even if the teachers would not otherwise qualify under the FLSA.</p>
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The DOL said teachers at religious schools can be ministers under this test.

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The party that requested the opinion letter asked the DOL to assume that the teachers qualified for the ministerial exemption and asked whether the exception would make the teachers exempt from the FLSA's wage and hour rules.

"With that assumption, the conclusion is an obvious one," Anderson said. The teachers (i.e., ministers) are exempt from the FLSA's wage and hour requirements under the ministerial exception.

Not all teachers working for a religious entity will necessarily be ministers. "Employers need to consider the requirement that, as ministers, the teachers are educating and training students in their faith," Anderson said. Employers need to pay close attention to a variety of identified factors, and not just the label.

"Whether the employees here actually qualify as ministers depends on their duties as employees, not upon the employer's designation," the DOL noted.

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