

APPENDIX

APPENDIX

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FEDERAL REGISTER

Volume 5

Number 201

Washington, Tuesday, October 15, 1940

* * *

TITLE 29—LABOR
CHAPTER V—WAGE AND HOUR DIVISION

PART 541—DEFINING AND DELIMITING THE TERMS
“ANY EMPLOYEE EMPLOYED IN A BONA FIDE
EXECUTE, ADMINISTRATIVE, PROFESSIONAL, OR
LOCAL RETAILING CAPACITY, OR IN THE CAPACITY
OF OUTSIDE SALESMAN”

* * *

§ 541.1 *Executive*. The term “employee employed in a bona fide executive * * * capacity” in section 13(a)(1) of the Act shall mean any employee

(a) whose primary duty consists of the management of the establishment in which he is employed or of a customarily recognized department or subdivision thereof, and

(b) who customarily and regularly directs the work of other employees therein, and

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and

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(d) who customarily and regularly exercises discretionary powers, and

(e) who is compensated for his services on a salary basis at not less than \$30 per week (exclusive of board, lodging, or other facilities), and

(f) whose hours of work of the same nature as that performed by nonexempt employees do not exceed twenty percent of the number of hours worked in the workweek by the nonexempt employees under his direction; provided that this subsection (f) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment.

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FEDERAL REGISTER

Volume 14

Number 249

Washington, Wednesday, December 28, 1949

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TITLE 29—LABOR
CHAPTER V—WAGE AND HOUR DIVISION

PART 541—DEFINING AND DELIMITING THE TERMS
“ANY EMPLOYEE EMPLOYED IN A BONA FIDE
EXECUTE, ADMINISTRATIVE, PROFESSIONAL, OR
LOCAL RETAILING CAPACITY, OR IN THE CAPACITY
OF OUTSIDE SALESMAN”

* * *

§ 541.117 *Amount of salary required.*
(a) Compensation on a salary basis at a rate of not less than \$55 per week is required for exemption as an executive. The \$55 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of \$110, semi-monthly on a salary basis of \$119.17 or monthly on a salary basis of \$238.33. However, the shortest period of payment which will meet the requirement of payment “on a salary basis” is a week.

(b) In Puerto Rico and the Virgin Islands, the salary test for exemption as an “executive” is \$30 a week.

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in

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Subpart A of this part do not prohibit the sale of such facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.119 *Special proviso for high salaried executives.* (a) Section 541.1 contains a special proviso for managerial employees who are compensated on a salary basis at a rate of not less than \$100 per week (exclusive of board, lodging, or other facilities). Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of § 541.1 if his primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof and includes customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under paragraphs (a) through (f) of § 541.1.

(b) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

* * *

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FEDERAL REGISTER

Volume 19

Number 138

Washington, Saturday, July 17, 1954

TITLE 29—LABOR
CHAPTER V—WAGE AND HOUR DIVISION

PART 541—DEFINING AND DELIMITING THE TERMS
“ANY EMPLOYEE EMPLOYED IN A BONA FIDE
EXECUTE, ADMINISTRATIVE, PROFESSIONAL, OR
LOCAL RETAILING CAPACITY, OR IN THE CAPACITY
OF OUTSIDE SALESMAN”

* * *

§ 541.118 *Salary basis.* (a) An employee will be considered to be paid “on a salary basis” within the meaning of the regulations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which he performs no work.

(1) An employee will not be considered to be “on a salary basis” if deductions from his predetermined compensation are made for absences occasioned by the

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employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(2) Deductions may be made, however, when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.

(3) Deductions may also be made for absences of a day or more occasioned by sickness or disability (including industrial accidents), if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under such plan, policy or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employee be paid any portion of his salary for such day or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a State sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial

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accident, the “salary basis” requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

(4) Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(5) Penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee’s salaried status. Safety rules of major significance include only those relating to the prevention of serious danger to the plant or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

(6) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not

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be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of \$55 or more per week and, in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in any week in which he performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis." For example, a salary of \$100 a week may not arbitrarily be divided into a guaranteed minimum of \$55 paid in each week in which any work is performed, and an additional \$45 which is made subject to deductions which are not permitted under paragraph (a) of this section.

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(c) *Initial and terminal weeks.* Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the regulations if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of the regulations.

* * *

1949 29 CFR Part 541, Section 541.118

**Part 541—Defining and Delimiting the Terms
“Any Employee Employed in a Bona Fide
Executive, Administrative, Professional, or Local
Retailing Capacity, or in the Capacity of Outside
Salesman”**

* * *

§ 541.118 *Salary basis.* (a) An employee will be considered to be paid on a salary basis within the meaning of the regulations in Subpart A of this part, if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the number of hours worked in the workweek or in the quality or quantity of the work performed. The employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked.

(b) It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of \$55 or more per week and, in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch if the employment arrangement also includes a guarantee of a least the minimum weekly salary (or the

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equivalent for a monthly or other period) required by the regulations in Subpart A of this part. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in Subpart A of this part in any week in which he performs any work. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement that the full salary must be paid in any week in which any work is performed. For example, a salary of \$100 a week may not arbitrarily be divided into a guaranteed minimum of \$55 paid in each week in which any work is performed, and an additional \$45 which is made subject to deductions.

(c) Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. For this purpose, an extended voluntary leave of absence may be considered to come within this rule. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the regulations in Subpart A of this part if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment

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on a salary basis within the meaning of the regulations
in Subpart A of this part.

* * *

**1963 29 CFR Part 541,
Sections 541.117 and 541.118**

**Part 541—DEFINING AND DELIMITING THE
TERMS “ANY EMPLOYEE EMPLOYED IN A
BONA FIDE EXECUTIVE, ADMINISTRATIVE,
OR PROFESSIONAL CAPACITY, OR IN THE
CAPACITY OF OUTSIDE SALESMAN”**

* * *

§ 541.117 Amount of salary required.

(a) Compensation on a salary basis at a rate of not less than \$80 per week is required for exemption as an executive.⁵ The \$80 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of \$160, semimonthly on a salary basis of \$173.33 or monthly on a salary basis of \$346.67. However, the shortest period of payment which will meet the requirement of payment “on a salary basis” is a week.

(b) In Puerto Rico and the Virgin Islands, the salary test for exemption as an “executive” is \$55 a week.

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is,

⁵ The validity of including a salary requirement in the regulations in Subpart A of this part has been sustained in a number of appellate court decisions. See, for example, *Walling v. Yeakley*, 140 F.(2) 830 (CCA 10); *Helliwall v. Haberman*, 140 F.(2) 833 (CCA 2); and *Walling v. Morris*, 155 F.(2) 832 (CCA 6) (reversed on another point in 332 U.S. 442)

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free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

[14 F.R. 7730, Dec. 28, 1949, as amended at 24 F.R. 581, Jan. 27, 1959]

§ 541.118 Salary basis.

(a) An employee will be considered to be paid “on a salary basis” within the meaning of the regulations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which he performs no work.

(1) An employee will not be considered to be “on a salary basis” if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

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(2) Deductions may be made, however, when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.

(3) Deductions may also be made for absences of a day or more occasioned by sickness or disability (including industrial accidents), if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under such plan, policy or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employee be paid any portion of his salary for such day or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a State sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial accident, the "salary basis" requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing

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compensation for sickness and disability other than that relating to industrial accidents.

(4) Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(5) Penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee's salaried status. Safety rules of major significance include only those relating to the prevention of serious danger to the plant or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

(6) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

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(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of \$80 or more per week and, in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in any week in which he performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis." For example, a salary of \$125 a week may not arbitrarily be divided into a guaranteed minimum of \$80 paid in each week in which any work is performed, and an additional \$45 which is made subject to deductions which are not permitted under paragraph (a) of this section.

(c) *Initial and terminal weeks.* Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the

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salary basis of payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the regulations if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of the regulations.

[19 F.R. 4406, July 17, 1954, as amended at 24 F.R. 581, Jan. 27, 1959]

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**1970 29 CFR Part 541,
Sections 541.117 and 541.118**

**PART 541—DEFINING AND DELIMITING
THE TERMS “ANY EMPLOYEE
EMPLOYED IN A BONA FIDE EXECUTIVE,
ADMINISTRATIVE, OR PROFESSIONAL,
CAPACITY (INCLUDING ANY EMPLOYEE
EMPLOYED IN THE CAPACITY OF
ACADEMIC ADMINISTRATIVE
PERSONNEL OR TEACHER IN
ELEMENTARY OR SECONDARY
SCHOOLS), OR IN THE CAPACITY OF
OUTSIDE SALESMAN”**

* * *

§ 541.117 Amount of salary required.

(a) Compensation on a salary basis at a rate of not less than \$100 per week is required for exemption as an executive. The \$100 a week may be translated into equivalent amounts for periods longer than 1 week. The requirement will be met if the employee is compensated biweekly on a salary basis of \$200, semimonthly on a salary basis of \$216.67 or monthly on a salary basis of \$433.33. However, the shortest period of payment which will meet the requirement of payment “on a salary basis” is a week.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an “executive” is \$75 per week.

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is,

free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

(d) The validity of including a salary requirement in the regulations in Subpart A of this part has been sustained in a number of appellate court decisions. See, for example, *Walling v. Yeakley*, 140 F. (2d) 830 (C.A. 10); *Helliwell v. Haberman*, 140 F. (2d) 833 (C.A. 2); and *Walling v. Morris*, 155 F. (2d) 832 (C.A. 6) (reversed on another point in 332 U.S. 442); *Wirtz v. Mississippi Publishers*, 364 F. (2d) 603 (C.A. 5); *Craig v. Far West Engineering Co.*, 265 F. (2d) 251 (C.A. 9) cert. den. 361 U.S. 816; *Hofer v. Federal Cartridge Corp.*, 71 F. Supp. 243 (D.C. Minn.).

[32 F.R. 7825, May 30, 1967]

§ 541.118 Salary basis.

(a) An employee will be considered to be paid “on a salary basis” within the meaning of the regulations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent, basis a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not

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be paid for any workweek in which he performs no work.

(1) An employee will not be considered to be “on a salary basis” if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(2) Deductions may be made, however, when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.

(3) Deductions may also be made for absences of a day or more occasioned by sickness or disability (including industrial accidents), if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer’s particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under such plan, policy or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employee be paid any portion of his salary for such day or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a

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State sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial accident, the “salary basis” requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

(4) Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(5) Penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee’s salaried status. Safety rules of major significance include only those relating to the prevention of serious danger to the plant or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

(6) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the

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exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of \$100 or more per week and, in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in any week in which he performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis". For example, a salary of

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\$145 a week may not arbitrarily be divided into a guaranteed minimum of \$100 paid in each week in which any work is performed, and an additional \$45 which is made subject to deductions which are not permitted under paragraph (a) of this section.

(c) *Initial and terminal weeks.* Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the regulations if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of the regulations.

[28 F.R. 9505, Aug. 30, 1963, as amended at 32 F.R. 7826, May 30, 1967]

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**1975 29 CFR Part 541,
Sections 541.117 and 541.118**

**PART 541—DEFINING AND DELIMITING
THE TERMS “ANY EMPLOYEE
EMPLOYED IN A BONA FIDE EXECUTIVE,
ADMINISTRATIVE, OR PROFESSIONAL,
CAPACITY (INCLUDING ANY EMPLOYEE
EMPLOYED IN THE CAPACITY OF
ACADEMIC ADMINISTRATIVE
PERSONNEL OR TEACHER IN
ELEMENTARY OR SECONDARY
SCHOOLS), OR IN THE CAPACITY OF
OUTSIDE SALESMAN”**

* * *

§ 541.117 Amount of salary required.

(a) Except as otherwise noted in paragraph (b) of this section, compensation on a salary basis at a rate of not less than \$155 per week, exclusive of board, lodging, or other facilities, is required for exemption as an executive. The \$155 a week may be translated into equivalent amounts for periods longer than 1 week. The requirement will be met if the employee is compensated biweekly on a salary basis of \$310, semimonthly on a salary basis of \$335.84 or monthly on a salary basis of \$671.67. However, the shortest period of payment which will meet the requirement of payment “on a salary basis” is a week.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an “executive” is \$130 per week for other than an employee of the Federal Government.

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(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in subpart A of this part do not prohibit the sale of such facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

(d) The validity of including a salary requirement in the regulations in subpart A of this part has been sustained in a number of appellate court decisions. See, for example, *Walling v. Yeakley*, 140 F. (2d) 830 (C.A. 10); *Helliwell v. Haberman*, 140 F. (2d) 833 (C.A. 2); and *Walling v. Morris*, 155 F. (2d) 832 (C.A. 6) (reversed on another point in 332 U.S. 442); *Wirtz v. Mississippi Publishers*, 364 F. (2d) 603 (C.A. 5); *Craig v. Far West Engineering Co.*, 265 F. (2d) 251 (C.A. 9) cert. den. 361 U.S. 816; *Holer v. Federal Cartridge Corp.*, 71 F. Supp. 243 (D.C. Minn.).

[38 FR 11390, May 7, 1973 as amended at 40 FR 7092, Feb. 19, 1975]

§ 541.118 Salary basis.

(a) An employee will be considered to be paid “on a salary basis” within the meaning of the regulations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to

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the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which he performs no work.

(1) An employee will not be considered to be “on a salary basis” if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

(2) Deductions may be made, however, when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.

(3) Deductions may also be made for absences of a day or more occasioned by sickness or disability (including industrial accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer’s particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under such plan, policy or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employee be paid any portion of his salary for such days or days for which he receives

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compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a State sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial accident, the “salary basis” requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to Industrial accidents.

(4) Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(5) Penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee’s salaried status. Safety rules of major significance include only those relating to the prevention of serious danger to the plant or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

(6) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it

indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

(b) *Minimum guarantee plus extras.*—It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of \$155 or more a week and in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of the branch, if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that the employee will receive not less than the amount specified in the regulations in any week in which the employee performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is

divided into two parts for the purpose of circumventing the requirement of payment “on a salary basis”. For example, a salary of \$200 in each week in which any work is performed, and an additional \$50 which is made subject to deductions which are not permitted under paragraph (a) of this section.

(c) *Initial and terminal weeks.* Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee’s salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the regulations if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of the regulations.

[38 FR 11390, May 7, 1973, as amended at 40 FR 7092, Feb. 19, 1975]

* * *

Code of Federal Regulations 2003

29 C.F.R. § 541.119
CODE OF FEDERAL REGULATIONS
TITLE 29—LABOR
SUBTITLE B—REGULATIONS RELATING TO
LABOR
CHAPTER V—WAGE AND HOUR DIVISION,
DEPARTMENT OF LABOR
SUBCHAPTER A—REGULATIONS
PART 541—DEFINING AND DELIMITING THE
TERMS “ANY EMPLOYEE EMPLOYED IN A
BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR
PROFESSIONAL CAPACITY (INCLUDING ANY
EMPLOYEE EMPLOYED IN THE CAPACITY OF
ACADEMIC ADMINISTRATIVE PERSONNEL OR
TEACHER IN ELEMENTARY OR SECONDARY
SCHOOLS), OR IN THE CAPACITY OF OUTSIDE
SALESMAN”
SUBPART B—INTERPRETATIONS
EMPLOYEE EMPLOYED IN A BONA FIDE
EXECUTIVE CAPACITY

§ 541.119 Special proviso for high salaried executives.

(a) Except as otherwise noted in paragraph (b) of this section, §541.1 contains an upset or high salary proviso for managerial employees who are compensated on a salary basis at a rate of not less than \$250 per week exclusive of board, lodging, or other facilities. Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of §541.1 if the employee’s primary duty consists of the management of the enterprise in which employed or of a customarily recognized department or subdivision

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thereof and includes the customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test that employee's qualifications in detail under paragraphs (a) through (f) of §541.1 of this Part.

(b) In Puerto Rico, the Virgin Islands, and American Samoa the proviso of §541.1(f) applies to those managerial employees (other than employees of the Federal Government) who are paid on a salary basis at a rate of not less than \$200 per week.

(c) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

[40 FR 7093, Feb. 19, 1975]

Effective Date Note: Section 541.119 was revised at 46 FR 3014, Jan. 13, 1981. In accordance with the President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of § 541.119 set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

§ 541.119 Special proviso for high salaried executives.

(a) Except as otherwise noted in paragraph (b) of this section, §541.1 contains an upset or high salary proviso for managerial employees who are compensated on a salary basis at a rate of not less than \$320 per week beginning February 13, 1981 and \$345 per week

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beginning February 13, 1983 exclusive of board, lodging, or other facilities. Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of §541.1 if the employee's primary duty consists of the management of the enterprise in which employed or of a customarily recognized department or subdivision thereof and includes the customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test that employee's qualifications in detail under paragraphs (a) through (f) of §541.1 of this Part.

(b) In Puerto Rico, the Virgin Islands, and American Samoa the proviso of §541.1(f) applies to those managerial employees (other than employees of the Federal Government) who are paid on a salary basis at a rate of not less than \$260 per week beginning February 13, 1981 and \$285 per week beginning February 13, 1983.

(c) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

**UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
WASHINGTON, D. C.**

**“Executive, Administrative,
Professional ... Outside
Salesman” Redefined**

Effective October 24, 1940

**Report and Recommendations of the
Presiding Officer
at Hearings Preliminary to Redefinition**

* * *

**EXEMPTION APPLIES ONLY TO SALARIED
EMPLOYEES**

It is hardly necessary to restate what has always been the position of the Wage and Hour Division, namely, that the \$30 for a workweek can be translated into equivalent terms for longer periods. Thus the requirement is fulfilled if the worker is paid \$130 for a month or a comparable amount for any other pay period. However, the requirement is not fulfilled by the earnings of a person who is paid on an hourly basis. The shortest pay period which can properly be understood to be appropriate for a person employed in an executive capacity is obviously a weekly pay period and hourly paid employees should not be entitled to the exemption. The executive status in and of itself connotes at least the tenure implied by a weekly pay period as the very minimum. Accordingly, it is recommended that this clause in the definition read: “Who is compensated for his services on a salary basis at not less than \$30 per week (exclusive of board,

lodging, or other facilities).” One final explanation may be made. In some instances persons who would otherwise qualify as executive employees, particularly sales managers and branch sales managers, are paid in part or in full by methods of compensation which include commissions, drawing accounts, and other items. In such instances the salary requirement will be met if the employee is guaranteed a net compensation of not less than \$30 a week “free and clear.” Similarly; if board and lodging are involved, there should be a “free and clear” payment of \$30 each week in cash.

It was also suggested that the phrase should read “at not less than the rate of \$30 * * * for a workweek.”⁷⁹ It was explained that this proviso was to take care of certain executives who are hired on a part-time basis. This would seem quite unnecessary, however, for a person earning at such a rate for part-time work would clearly fulfill the minimum wage requirements of the act and, if his work were only part-time, would not be subject to overtime payments. The modification therefore seems unnecessary.

* * *

⁷⁹ Statement of Noel Sargent, National Association of Manufacturers, record June 3–5, hearing, vol. III, p. 374.

UNITED STATES DEPARTMENT OF LABOR
Maurice J. Tobin, Secretary

Wage and Hour and Public Contracts Divisions
Wm. R. McComb, *Administrator*
WASHINGTON, D. C.

REPORT AND RECOMMENDATIONS
ON PROPOSED REVISIONS OF REGULATIONS,
PART 541

Defining the Terms
“Executive” “Administrative”
“Professional”
“Local Retailing Capacity”
“Outside Salesman”

••••• as contained in Section 13(a)(1) of the
Fair Labor Standards Act of 1938, providing
exemptions from the wage and hour provisions
of the act.

June 1949

* * *

“On a Salary * * * Basis”

The notice of hearing invited evidence on the need for revision or definition of the term “on a salary * * * basis.” In response to this notice, a number of proposals relating to the “salary basis” requirements in the regulations were made in the course of the hearing. One of these was that the requirement of payment “on a salary * * * basis” be eliminated and that “average

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compensation” be used instead;⁹⁰ another, that employees be permitted to qualify for exemption even if paid an hourly wage.⁹¹ Some witnesses suggested that the term “salary basis” be defined to mean payment of a fixed or guaranteed sum.⁹² The evidence at the hearing showed clearly that bona fide executive, administrative, and professional employees are almost universally paid on a salary or fee basis. Compensation on a salary basis appears to have been almost universally recognized as the only method of payment consistent with the status implied by the term “bona fide” executive.⁹³ Similarly, payment on a salary (or fee) basis is one of the recognized attributes of administrative and professional employment. The proposals to eliminate the requirement and to apply an hourly rate or average earnings test may therefore be rejected as inconsistent with true executive, administrative or professional status.

* * *

⁹⁰ National Association of Motor Bus Operators, transcript, p. 1792.

⁹¹ Lennox Furnace Co., S. L. No. 9.

⁹² Office Employees International Union, AFL, transcript, p. 2734; National Coal Association, transcript, p. 1473; and Central Pennsylvania Coal Producers’ Association, transcript, p. 1581.

⁹³ See, for example, transcript, pp. 99–100, 134–135, 399, 707, 771–772, 999–1000, 1431–1432. The argument was also made, however, that the requirement of payment on a salary basis is illegal. See Exhibit No. 15.

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February 8, 1956

MEMORANDUM

To: Mr. Stuart Rothman, Solicitor
From: Newell Brown, Administrator
Subject: "On a Salary Basis" – Section 541.118
Explanatory Bulletin, Regulations, Part 541

In the past the Divisions have held that even though an employee meets all other requirements of Regulations, Part 541.1, 541.2, or 541.3 and is guaranteed a weekly salary in an amount equal to in excess of the amounts specified, the requirement that he be paid "on a salary basis" will not be met if he is paid on an hourly rate basis.

The Policy Committee has reviewed this position and has recommended a change. On the basis of that recommendation, I propose to change this position so that such an employee will meet the "salary basis" test if there is a reasonable relationship between the hourly rate, the regular or normal weekly hours, and the amount of the weekly guarantee. Thus, the test will be met only if the weekly guarantee is roughly equivalent to the employee's earnings for his regular or normal workweek.

Will you please advise me whether there are any legal barriers to the adoption of such a position?

FO:EMA:PAM

1/4/56

MEMORANDUM

TO: Mr. Newell Brown
Administrator

FROM: Stuart Rothman
Solicitor

SUBJECT: "On a Salary Basis" – Section 541.118
Explanatory Bulletin, Regulations, Part
541

I have your memorandum dated February 8.

The Regulations, Part 541, prescribe among other things that the employee cannot be exempt unless he is employed on a salary basis. You wish to construe the regulation so as to include a person who is employed on an hourly rate and receives a guarantee which will in all events be at least equal to the prescribed salary. You wish to do this only if there is a reasonable relationship between the hourly rate and the amount of the guarantee. I think that this interpretation is an appropriate one and see no reason why you may not adopt it.

SOL: (288)EC
2/15/56 3/14-3/15/56

FLSA-437 MAY 7,1993

FLSA-437

May 7, 1993

This is in response to your letter requesting an opinion concerning the application of the minimum wage and overtime pay exemption contained in Section 13(a)(1) of the Fair Labor Standards Act (FLSA) to jobsite supervisors who are paid in accordance with the compensation method you describe. We regret the delay in responding to your inquiry.

You state that you represent ***, a construction contractor whose jobsite supervisors are full time employees who supervise a crew of employees which vary and do not comprise a stable or permanent workforce. The responsibility of these supervisors includes the layout and planning of all work performed, hiring, firing and discipline of employees, completing employee time records and reporting the records to the company on a weekly basis. These supervisors are given a \$500 cash advance, in perpetuity, which they are required to repay upon separation from employment. They are paid an hourly wage ranging from \$15 to \$20 per hour, and they receive a guaranteed compensation of \$300 for any week in which they perform work for the company.

The tests for exemption from the FLSA's minimum wage and overtime pay provisions for bona fide executive employees are contained in Section 541.1 of Regulations, Part 541, a copy of which is enclosed. One such test requires that an employee be paid on a salary basis within the meaning of Section 541.118 of the

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regulations. In order to be considered paid on a salary basis, the employee must receive each pay period a predetermined amount constituting all or part of his or her compensation, which amount is not subject to reduction because of variations in quality or quantity of the work performed. This salary must be paid free and clear and must not be less than that required by the regulations.

An employee whose salary is computed on an hourly rate basis will be considered as employed "on a salary basis" if he is guaranteed a salary which is at least equal to the salary prescribed in the regulations. It is our long standing position, however, that there must be a reasonable relationship between the hourly rate, the regular or normal working hours and the amount of the weekly guarantee. The "reasonable relationship" test will be met if the weekly guarantee is roughly equivalent to the employee's earnings at the assigned hourly rate for his normal workweek.

Based on the information provided, it appears that there is no "reasonable relationship" between the guaranteed salary and the hourly wage paid to the supervisors on a weekly basis, since the guaranteed salary would be earned after an employee works 20 hours in a workweek at the \$15 rate, and 15 hours in a workweek at the \$20 rate. Thus, such employees would not be exempt and must be compensated for all hours worked in accordance with the minimum wage and overtime compensation requirements of the FLSA.

We trust that the above discussion is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us.

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Sincerely,

Acting Administrator

<http://esa/WHD/cars/flsa/letters/flsa-473.htm>

09/17/1999

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Advance Insert #5
Page 22 b03a-22c02
April 12, 1956
REVISED

SUPERSEDES ADVANCE
INSERT #5 OF
APRIL 10, 1956

FIELD OPERATIONS HANDBOOK

22b07 - Computation of a salary on an hourly-rate basis.

An employee whose salary is computed on an hourly-rate basis will be considered as employed "on a salary basis" if he is guaranteed a salary which is at least equal to the salary prescribed by Regulations, Part 541 and if there is a reasonable relationship between the hourly rate, the regular or normal working hours and the amount of the weekly guarantee. The "reasonable relationship" test will be met if the weekly guarantee is roughly equivalent to the employee's earnings at the assigned hourly rate for his normal workweek.

FIELD OPERATIONS HANDBOOK - 5/12/70

22b SALARY BASIS 22b-22b05

22b00 Salary reduction as result of reduced workweek. A reduction in salary to not less than the applicable minimum salary because of a reduction in the normal scheduled w/w is permissible and will not defeat the exemption, provided that the reduction in salary is a bona fide reduction which is not designed to circumvent the salary basis requirement.

22b01 Extra compensation paid for OT. Extra compensation may be paid for OT to an exempt employee on any basis. The OT payment need not be at time and one-half, but may be at straight time, or flat sum, or on any other basis.

22b02 Salaries paid by joint employers. When an otherwise exempt employee is jointly employed by two or more employers (see IB 791), each of whom pays him on a salary basis as defined in Reg 541, his salaries may be combined for purposes of meeting the minimum salary requirement.

22b03 Computation of a salary on an hourly rate basis. An employee whose salary is computed on an hourly rate basis will be considered as employed "on a salary basis" if he is guaranteed a salary which is at least equal to the salary prescribed by Reg 541 and if there is a reasonable relationship of the weekly guarantee. The "reasonable relationship" test will be met if the weekly guarantee is roughly equivalent to the employee's earnings at the assigned hourly rate for his normal w/w.

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22b04 Offsetting subsistence allowance paid military personnel. Military subsistence allowances may not be included in the amounts offset against the salary required by Reg 541 since such payments constitute payment for board, lodging, or other facilities. (However, see Reg 541.118(a)(4) regarding military pay.)

22b05 Deduction of extra compensation paid for extended workweek. (a) Extra compensation paid to an exempt employee on a scheduled extended w/w may be deducted from his pay if the employee fails to work the full extended w/w schedule. Since the payment of extra compensation is an addition to, rather than a part of an employee's predetermined salary, the deduction of all or part of this additional amount, when an exempt employee fails to work the full extended w/w schedule, will not be a deduction from the employee's predetermined salary.

(b) An extended w/w schedule is a definite schedule of hours longer than the regular w/w for a temporary period, usually a month or more, with OT generally paid for the extra hours or days worked. For example, an employee on an eight-hour day, five-day week schedule may work five days of nine hours each or six days of eight hours. A change in the w/w which is intended to be or is in fact permanent is not an extended w/w as herein used.

FEDERAL REGISTER

Volume 46

Number 8

Washington, Tuesday, January 13, 1981

* * *

541.117 Amount of salary required.

(a) Except as otherwise noted in paragraph (b) of this section, compensation on a salary basis at a rate of not less than \$225 per week beginning February 13, 1981 and \$250 per week beginning February 13, 1983, exclusive of board, lodging, or other facilities, is required for exemption as an executive. The \$225 a week or \$250 a week may be translated into equivalent amounts for periods longer than 1 week. For example, based on \$250 a week, the requirement will be met if the employee is compensated biweekly on a salary basis of \$500, semimonthly on a salary basis of \$541.67 or monthly on a salary basis of \$1083.33. However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an "executive" is \$180 per week beginning February 13, 1981 and \$200 per week beginning February 13, 1983 for other than an employee of the Federal Government.

541.118 Salary basis.

* * * * *

(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of \$250 or more a week and in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of the branch, if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that the employee will receive not less than the amount specified in the regulations in any week in which the employee performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis". For example, a salary of \$300 in each week in which any work is performed, and an additional \$55 which is made subject to deductions which are not permitted under paragraph (a) of this section.

* * *