

the morning and perform in the course of his examinations essentially similar tests. It requires not only judgment and discretion on his part but a continual variety of interpretation of the tests to perform satisfactory work. Likewise, although a professional chemist may make a series of similar tests, the problems presented will vary as will the deductions to be made therefrom. The work of the true professional is inherently varied even though similar outward actions may be performed.

(b) Another example of this is the professional medical technologist who performs complicated chemical, microscopic, and bacteriological tests and procedures. In a large medical laboratory or clinic, the technologist usually specializes in making several kinds of related tests in areas such as microbiology, parasitology, biochemistry, hematology, histology, cytology, and nuclear medical technology. The technologist also does the blood banking. He will also conduct tests related to the examination and treatment of patients, or do research on new drugs, or on the improvement of laboratory techniques, or teach and perform administrative duties. The simple, routine, and preliminary tests are generally performed by laboratory assistants or technicians. However, technologists who work in small laboratories may perform tasks that are performed by nonexempt employees in larger establishments. This type of activity will not necessarily be considered nonexempt (see § 541.307).

(c) On the other hand, X-ray technicians have only limited opportunity for the exercise of independent discretion and judgment, usually performing their duties under the supervision of a more highly qualified employee. The more complex duties of interpretation and judgment in this field are performed by obviously exempt professional employees.

**§ 541.307 Essential part of and necessarily incident to.**

(a) Section 541.3(d), it will be noted, has the effect of including within the exempt work activities which are an essential part of and necessarily incident to the professional work described

in § 541.3 (a) through (c). This provision recognizes the fact that there are professional employees whose work necessarily involves some of the actual routine physical tasks also performed by obviously nonexempt employees. For example, a chemist performing important and original experiments frequently finds it necessary to perform himself some of the most mental tasks in connection with the operation of his experiments, even though at times these menial tasks can be conveniently or properly assigned to laboratory assistants. See also the example of incidental interviewing or investigation in § 541.303(a)(3).

(b) It should be noted that the test of whether routine work is exempt work is different in the definition of "professional" from that in the definition of "executive" and "administrative." Thus, while routine work will be exempt if it is "directly and closely related" to the performance of executive or administrative duties, work which is directly and closely related to the performance of the professional duties will not be exempt unless it is also "an essential part of and necessarily incident to" the professional work.

(c) Section 541.3(d) takes into consideration the fact that there are teaching employees whose work necessarily involves some of the actual routine duties and physical tasks also performed by nonexempt employees. For example, a teacher may conduct his pupils on a field trip related to the classroom work of his pupils and in connection with the field trip engage in activities such as driving a school bus and monitoring the behavior of his pupils in public restaurants. These duties are an essential part of and necessarily incident to his job as teacher. However, driving a school bus each day at the beginning and end of the schools day to pick up and deliver pupils would not be exempt type work.

**§ 541.308 Nonexempt work generally.**

(a) It has been the Divisions' experience that some employers erroneously believe that anyone employed in the field of accountancy, engineering, or other professional fields, will qualify for exemption as a professional employee by virtue of such employment.

While there are many exempt employees in these fields, the exemption of individual depends upon his duties and other qualifications.

(b) It is necessary to emphasize the fact that section 13(a)(1) exempts "any employee employed in a bona fide \* \* \* professional capacity." It does not exempt all employees of professional employers, or all employees in industries having large numbers of professional members, or all employees in any particular occupation. Nor does it exempt, as such those learning a profession. Moreover, it does not exempt persons with professional training, who are working in professional fields, but performing subprofessional or routine work. For example, in the field of library science there are large numbers of employees who are trained librarians but who, nevertheless, do not perform professional work or receive salaries commensurate with recognized professional status. The field of "engineering" has many persons with "engineer" titles, who are not professional engineers, as well as many who are trained in the engineering profession, but are actually working as trainees, junior engineers, or draftsmen.

**§ 541.309 20-percent nonexempt work limitation.**

Time spent in nonexempt work, that is, work which is not an essential part of and necessarily incident to the exempt work, is limited to 20 percent of the time worked by the employee in the workweek.

**§ 541.310 Trainees, professional.**

The exemption applies to an employee employed in a bona fide professional capacity and does not include trainees who are not actually performing the duties of a professional employee.

**§ 541.311 Amount of salary or fees required.**

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than \$170 per week, exclusive of board, lodging or other facilities, is required for exemption as a "professional employee." An employee will meet this requirement if paid a bi-

weekly salary of \$340, a semi monthly salary of \$368.33 or a monthly salary of \$736.67.

(b) In Puerto Rico, the Virgin Islands, and American Samoa the salary test for exemption as a "professional" for other than employees of the Federal Government is \$150 per week.

(c) The payment of the compensation specified in paragraph (a) or (b) of this section is not a requisite for exemption in the case of employees exempted from this requirement by the proviso to § 541.3(e), as explained in § 541.314.

(d) 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 professional employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

[38 FR 11390, May 7, 1973, as amended at 40 FR 7093, Feb. 19, 1975]

EFFECTIVE DATE NOTE: Paragraphs (a) and (b) in § 541.311 were revised at 46 FR 3015, 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 paragraphs (a) and (b) set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

**§ 541.311 Amount of salary or fees required.**

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than \$250 per week beginning February 13, 1981 and \$280 per week beginning February 13, 1983, exclusive of board, lodging or other facilities, is required for exemption as a "professional employee." For example, based on \$280 a week, an employee will meet this requirement if paid a biweekly salary of \$560, a semi-monthly salary of \$606.67 or a monthly salary of \$1,213.33.

(b) In Puerto Rico, the Virgin Islands, and American Samoa the salary test for exemption as a "professional" for other than employees of the Federal Government is \$225 per week beginning February 13, 1981 and \$250 per week beginning February 13, 1983.

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