

CHAPTER 218

EMPLOYEES 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 SALESPERSON

[Prior to 11/4/98, see 347—Ch 218]

875—218.1(91D) Executive. “Employee employed in a bona fide executive...capacity” means any employee:

218.1(1) Whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

218.1(2) Who customarily and regularly directs the work of two or more other employees therein;

218.1(3) 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;

218.1(4) Who customarily and regularly exercises discretionary powers;

218.1(5) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of the hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in 218.1(1) to 218.1(4) of this definition: Provided, that this subrule shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which employed; and

218.1(6) Who is compensated for services on a salary basis at a rate of not less than \$310 per week, exclusive of board, lodging, or other facilities, provided that an employee who is compensated on a salary basis at a rate of not less than \$500 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which the employee is 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, shall be deemed to meet all the requirements of this rule.

SOURCE: 29 CFR 541.1.

875—218.2(91D) Administrative. “Employee employed in a bona fide...administrative...capacity” means any employee:

218.2(1) Whose primary duty consists of either:

a. The performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer’s customers, or

b. The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

218.2(2) Who customarily and regularly exercises discretion and independent judgment; and

218.2(3) a. Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as those terms are defined in this chapter), or

b. Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

c. Who executes under only general supervision special assignments and tasks; and

218.2(4) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of the employee hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in 218.2(1) to 218.2(3); and

218.2(5) a. Who is compensated for services on a salary or fee basis at a rate of not less than \$310 per week, exclusive of board, lodging, or other facilities, or

b. Who, in the case of academic administrative personnel, is compensated for services as required by 218.2(5) “*a*” or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which employed, provided that an employee who is compensated on a salary or fee basis at a rate of not less than \$500 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in 218.2(1) of this rule, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all the requirements of this rule.

SOURCE: 29 CFR 541.2.

875—218.3(91D) Professional. “Employee employed in a bona fide...professional capacity” means any employee:

218.3(1) Whose primary duty consists of the performance of:

a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes,

b. Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or

c. Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which employed;

218.3(2) Whose work requires the consistent exercise of discretion and judgment in its performance;

218.3(3) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

218.3(4) Who does not devote more than 20 percent of the hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in 218.3(1) to 218.3(3);

218.3(5) Who is compensated for services on a salary basis at a rate of not less than \$340 per week, exclusive of board, lodging, or other facilities, provided that this subrule shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in 218.3(1) “*c*,” provided that an employee who is compensated on a salary or fee basis at a rate of not less than \$500 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in 218.3(1) “*a*” to 218.3(1) “*c*,” which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this rule.

SOURCE: 29 CFR 541.3.

875—218.4 Reserved.

875—218.5(91D) Outside salesperson. “Employee employed... in the capacity of outside salesperson” means any employee:

218.5(1) Who is employed for the purpose of and who is customarily and regularly engaged away from the employer’s place or places of business in:

a. Making sales which include any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition, or

b. Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

218.5(2) Whose hours of work of a nature other than that described in 218.5(1) “*a*” or “*b*” do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer, provided that work performed incidental to and in conjunction with the employee’s own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

SOURCE: 29 CFR 541.5.

875—218.6(91D) Special provision for motion picture producing industry. The requirement of rules 218.1(91D) to 218.3(91D) that the employee be paid “on a salary basis” shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$500 a week (exclusive of board, lodging, or other facilities).

SOURCE: 29 CFR 541.5a.

875—218.7 to 218.100 Reserved.

BONA FIDE EXECUTIVE CAPACITY

875—218.101(91D) General. The work described in 218.1(1) to 218.1(4) and the activities directly and closely related to that work will be referred to as “exempt” work, while other activities will be referred to as “nonexempt” work.

SOURCE: 29 CFR 541.101.

875—218.102(91D) Management.

218.102(1) In the usual situation the determination of whether a particular kind of work is exempt or nonexempt in nature is not difficult. In the vast majority of cases the bona fide executive employee performs managerial and supervisory functions which are easily recognized as within the scope of the exemption.

218.102(2) For example, work similar to the following is exempt work when it is performed by an employee in the management of the employee’s department or the supervision of employees:

- a.* Interviewing, selecting, and training of employees;
- b.* Setting and adjusting their rates of pay and hours of work;
- c.* Directing their work;
- d.* Maintaining their production or sales records for use in supervision or control;
- e.* Appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status;
- f.* Handling their complaints and grievances and disciplining them when necessary;
- g.* Planning the work;
- h.* Determining the techniques to be used;
- i.* Apportioning the work among the workers;
- j.* Determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold;
- k.* Controlling the flow and distribution of materials or merchandise and supplies; and
- l.* Providing for the safety of the employees and the property.

SOURCE: 29 CFR 541.102.

875—218.103(91D) Primary duty. A determination of whether an employee has management as the primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case, primary duty means the major part, or over 50 percent, of the employee's time. Thus, an employee who spends over 50 percent of the time in management would have management as the primary duty. Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of the time in managerial duties, the employee might nevertheless have management as the primary duty if the other pertinent factors support the conclusion. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, the employee's relative freedom from supervision, and the relationship between the employee's salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

SOURCE: 29 CFR 541.103.

875—218.104(91D) Department or subdivision.

218.104(1) In order to qualify under 218.1(91D), the employee's managerial duties must be performed with respect to the enterprise in which the employee is employed or a customarily recognized department or subdivision thereof. The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of persons assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. In order to properly classify an individual as an executive, the employee must be more than merely a supervisor of two or more employees; nor is it sufficient that the employee merely participate in the management of the unit. The employee must be in charge of and have as the primary duty the management of a recognized unit which has a continuing function.

218.104(2) In the vast majority of cases there is no difficulty in determining whether an individual is in charge of a customarily recognized department or subdivision of a department. For example, where an enterprise comprises more than one establishment, the employee in charge of each establishment may be considered in charge of a subdivision of the enterprise.

218.104(3) The unit supervised need not be physically within the employer's establishment and may move from place to place, and that continuity of the same subordinate personnel is not absolutely essential to the existence of a recognized unit with a continuing function, although in the ordinary case a fixed location and continuity of personnel are both helpful in establishing the existence of a unit.

SOURCE: 29 CFR 541.104.

875—218.105(91D) Two or more other employees.

218.105(1) An employee will qualify as an "executive" under 218.1(91D) only if the employee customarily and regularly supervises at least two full-time employees or the equivalent. For example, if the "executive" supervises one full-time and two part-time employees, one of whom works mornings and one, afternoons, or four part-time employees, two of whom work mornings and two, afternoons, this requirement would be met.

218.105(2) The employees supervised must be employed in the department which the "executive" is managing.

218.105(3) to 218.105(5) Reserved.

SOURCE: 29 CFR 541.105.

875—218.106(91D) Authority to hire or fire. Rule 218.1(91D) requires that an exempt executive employee have the authority to hire or fire other employees or that the exempt executive employee's suggestions and recommendations as to hiring or firing and as to advancement and promotion or

any other change of status of the employees whom the executive supervises will be given particular weight. Thus, no employee, whether high or low in the hierarchy of management, can be considered as employed in a bona fide executive capacity unless the executive is directly concerned either with the hiring or the firing and other change of status of the employees under the executive's supervision, whether by direct action or by recommendation to those to whom the hiring and firing functions are delegated.

SOURCE: 29 CFR 541.106.

875—218.107(91D) Discretionary powers.

218.107(1) An exempt executive employee shall customarily and regularly exercise discretionary powers. A person whose work is so completely routinized that the person has no discretion does not qualify for exemption.

218.107(2) The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretionary powers in the day-to-day performance of duties. The requirement is not met by the occasional exercise of discretionary powers.

SOURCE: 29 CFR 541.107.

875—218.108(91D) Work directly and closely related.

218.108(1) This phrase brings within the category of exempt work not only the actual management of the department and the supervision of the employees therein, but also activities which are closely associated with the performance of the duties involved in the managerial and supervisory functions or responsibilities. The supervision of employees and the management of a department include a great many directly and closely related tasks which are different from the work performed by subordinates and are commonly performed by supervisors because they are helpful in supervising the employees or contribute to the smooth functioning of the department for which they are responsible. Frequently, this exempt work is of a kind which, in establishments that are organized differently or which are larger and have greater specialization of function, may be performed by a nonexempt employee hired especially for that purpose.

218.108(2) to 218.108(7) Reserved.

SOURCE: 29 CFR 541.108.

875—218.109(91D) Emergencies.

218.109(1) Under certain occasional emergency conditions, work which is normally performed by nonexempt employees and is nonexempt in nature will be directly and closely related to the performance of the exempt functions of management and supervision and will therefore be exempt work. In effect, this means that a bona fide executive who performs work of a normally nonexempt nature on rare occasions because of the existence of a real emergency will not, because of the performance of the emergency work, lose the exemption. Bona fide executives include among their responsibilities the safety of the employees under their supervision, the preservation and protection of the merchandise, machinery or other property of the department or subdivision in their charge from damage due to unforeseen circumstances, and the prevention of widespread breakdown in production, sales, or service operations. Consequently, when conditions beyond control arise which threaten the safety of the employees, or a cessation of operations, or serious damage to the employer's property, any manual or other normally nonexempt work performed in an effort to prevent such results is considered exempt work and is not included in computing the percentage limitation on nonexempt work.

218.109(2) Subrule 218.109(1) is not applicable to nonexempt work arising out of occurrences which are not regular, predictable and hence controllable.

218.109(3) and **218.109(4)** Reserved.

SOURCE: 29 CFR 541.109.

875—218.110(91D) Occasional tasks. In determining whether occasional tasks are directly and closely related to the performance of the management duties, consideration should be given to whether the work is:

1. The same as the work performed by any of the subordinates of the executive;
2. A specifically assigned task of the executive employees;
3. Practicably delegable to nonexempt employees in the establishment; or
4. Repetitive and frequently recurring.

SOURCE: 29 CFR 541.110.

875—218.111(91D) Nonexempt work generally.

218.111(1) “Nonexempt work” includes all work other than that described in 218.1(1) to 218.1(4) and the activities directly and closely related to that work.

218.111(2) Nonexempt work is easily identifiable where, as in the usual case, it consists of work of the same nature as that performed by the nonexempt subordinates of the “executive.” It is more difficult to identify in cases where supervisory employees spend a significant amount of time in activities not performed by any of their subordinates and not consisting of actual supervision and management. In those cases careful analysis of the employee’s duties with reference to the phrase “directly and closely related to the performance of the work described” will usually be necessary in arriving at a determination.

SOURCE: 29 CFR 541.111.

875—218.112(91D) Percentage limitations on nonexempt work.

218.112(1) *Exemption as an executive.* An employee will not qualify for exemption as an executive if the employee devotes more than 20 percent, or in the case of an employee of a retail or service establishment if the employee devotes as much as 40 percent, of the hours worked in the workweek to nonexempt work. This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

218.112(2) *Maximum allowance application.*

a. The maximum allowance of 20 percent for nonexempt work applies unless the establishment by which the employee is employed qualifies for the higher allowance as a retail or service establishment. An establishment must be a distinct physical place of business, open to the general public, which is engaged on the premises in making sales of goods or services to which the concept of retail selling or servicing applies. An establishment must make at least 75 percent of its annual dollar volume of sales of goods or services from sales that are both not for resale and recognized as retail in the particular industry. Types of establishments which may meet these tests include stores selling consumer goods to the public; hotels; motels; restaurants; some types of amusement or recreational establishments (but not those offering wagering or gambling facilities); hospitals, or institutions primarily engaged in the care of the sick, the aged, the mentally ill, or deficient residing on the premises, if open to the general public; public parking lots and parking garages; auto repair shops; gasoline service stations (but not truck stops); funeral homes; cemeteries; etc.

b. Reserved.

c. An establishment engaged in laundering, cleaning, or repairing clothing or fabrics is not a retail or service establishment.

218.112(3) *Percentage limitations—exceptions.* There are two special exceptions to the percentage limitations of 218.112(1):

a. That relating to the employee in “sole charge” of an independent or branch establishment, and

b. That relating to an employee owning a 20 percent interest in the enterprise in which the employee is employed. These except the employee only from the percentage limitations on nonexempt

work. They do not except the employee from any of the other requirements of 218.1(91D). Thus, while the percentage limitations on nonexempt work are not applicable, an employee would not qualify for the exemption if the employee performs so much nonexempt work that the employee could no longer meet the requirement of 218.1(1) that the primary duty must consist of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof.

SOURCE: 29 CFR 541.112.

875—218.113(91D) Sole-charge exception.

218.113(1) An exception from the percentage limitations on nonexempt work is provided in 218.1(5) for “an employee who is in sole charge of an independent establishment or a physically separated branch establishment. . . .” These employees are considered to be employed in a bona fide executive capacity even though they exceed the applicable percentage limitation on nonexempt work.

218.113(2) The term “independent establishment” must be given full weight. The establishment must have a fixed location and must be geographically separated from other company property. The management of operations within one among several buildings located on a single or adjoining tracts of company property does not qualify for the exemption under this heading. In the case of a branch, there must be a true and complete physical separation from the main office.

SOURCE: 29 CFR 541.113.

875—218.114(91D) Exception for owners of 20 percent interest.

218.114(1) An exception from the percentage limitations on nonexempt work is provided for an employee “who owns at least a 20 percent interest in the enterprise” in which the employee is employed. This provision recognizes the special status of a shareholder of an enterprise who is actively engaged in its management.

218.114(2) The exception is available to an employee owning a bona fide 20 percent equity in the enterprise in which the employee is employed regardless of whether the business is a corporate or other type of organization.

SOURCE: 29 CFR 541.114.

875—218.115(91D) Working supervisor.

218.115(1) The primary purpose of the exclusionary language placing a limitation on the amount of nonexempt work is to distinguish between the bona fide executive and the “working” supervisor who regularly performs “production” work or other work which is unrelated or only remotely related to the employee’s supervisory activities. (The term “working” supervisor is used in this chapter in the sense indicated in the text and should not be construed to mean only one who performs work similar to that performed by subordinates.)

218.115(2) Reserved.

SOURCE: 29 CFR 541.115.

875—218.116(91D) Trainees, executive. The exemption is applicable to an employee employed in a bona fide executive capacity and does not include employees training to become executives and not actually performing the duties of an executive.

SOURCE: 29 CFR 541.116.

875—218.117(91D) Amount of salary required.

218.117(1) Compensation on a salary basis at a rate of not less than \$310 per week, exclusive of board, lodging, or other facilities, is required for exemption as an executive. The \$310 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 \$620, semimonthly on a salary basis of \$671.68 or monthly on a salary basis of \$1343.35. However, the shortest period of payment which will meet the requirement of payment “on a salary basis” is a week.

218.117(2) Reserved.

218.117(3) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. Alternatively, the sale of the facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons is not prohibited.

SOURCE: 29 CFR 541.117.

875—218.118(91D) Salary basis.

218.118(1) Eligibility. An employee will be considered to be paid “on a salary basis” if, under the employee’s employment agreement, the employee regularly receives each pay period, on a weekly or less frequent basis, a predetermined amount constituting all or part of the employee’s 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 in this subrule, the employee must receive full salary for any week in which the employee 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 the employee performs no work.

a. An employee will not be considered to be “on a salary basis” if deductions from the 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.

b. Deductions may be made, however, when the employee is absent 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, the employee’s salaried status will not be affected if deductions are made from the employee’s salary for the absences.

c. Deductions may also be made for absences of a day or more occasioned by sickness or disability (including work-related 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 the absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. It is not required that the employee be paid any portion of the salary for the day or days for which the employee receives compensation for leave under the plan, policy or practice. Similarly, if the employer operates under a statutorily mandated or 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 a work-related 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.

d. 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.

e. 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.

f. 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 that case,

the exemption would not be applicable to the employee during the entire period when deductions were being made. Alternatively, 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 the deductions and promises to comply in the future.

218.118(2) *Minimum guarantee plus extras.* Salary may consist of a predetermined amount constituting all or part of the employee's compensation.

218.118(3) *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.

SOURCE: 29 CFR 541.118.

875—218.119(91D) Special proviso for high-salaried executives.

218.119(1) Rule 218.1(91D) contains an upset or high-salary proviso for managerial employees who are compensated on a salary basis at a rate of not less than \$500 per week exclusive of board, lodging, or other facilities. This highly paid employee is deemed to meet all the requirements in 218.1(1) to 218.1(6) 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 218.1(1) to 218.1(6).

218.119(2) Reserved.

218.119(3) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

SOURCE: 29 CFR 541.119.

875—218.120 to 218.200 Reserved.

BONA FIDE ADMINISTRATIVE CAPACITY

875—218.201(91D) Types of administrative employees.

218.201(1) *Exemption as administrative employee.* Three types of employees are described in 218.2(3) who, if they meet the other tests in rule 218.2(91D), qualify for exemption as "administrative" employees.

a. Executive and administrative assistants (the assistant to a proprietor or to an executive or administrative employee). Typical titles of persons in this group are executive assistant to the president, confidential assistant, executive secretary, assistant to the general manager, administrative assistant and, in retail or service establishments, assistant manager and assistant buyer.

b. Staff employees.

(1) Employees included are those who can be described as staff rather than line employees, or as functional rather than department heads. They include among others employees who act as advisory specialists to the management. Typical examples of advisory specialists are tax experts, insurance experts, sales research experts, wage-rate analysts, investment consultants, foreign exchange consultants, and statisticians.

(2) Also included are persons in charge of a so-called functional department, which may frequently be a one-person department. Typical examples are credit managers, purchasing agents, buyers, safety directors, personnel directors, and labor relations directors.

c. Those who perform special assignments.

(1) These are persons who perform special assignments, often away from the employer's place of business. Typical titles of such persons are lease buyers, field representatives of utility companies, location managers of motion picture companies, and district gaugers for oil companies.

(2) This classification also includes employees whose special assignments are performed entirely or partly inside their employer's place of business. Examples are special organization planners, customers' brokers in stock exchange firms, so-called account executives in advertising firms and contact or promotion persons of various types.

218.201(2) *Job titles insufficient as yardsticks.*

a. The employees for whom exemption is sought under the term "administrative" have extremely diverse functions and a wide variety of titles. A title alone is of little or no assistance in determining the true importance of an employee to the employer or the employee's exempt or nonexempt status.

b. The exempt or nonexempt status of any particular employee must be determined on the basis of the employee's duties, responsibilities and salary.

218.201(3) *Academic administration.* Individuals engaged in the overall academic administration of an elementary or secondary school system include the superintendent or other head of the system and those assistants whose duties are primarily concerned with administration of matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program. In individual school establishments those engaged in academic administration include the principal, vice principals and department heads who are responsible for the operation of the school.

SOURCE: 29 CFR 541.201.

875—218.202 Reserved.

875—218.203(91D) Nonmanual work.

218.203(1) The requirement that the work performed by an exempt administrative employee must be office work or nonmanual work restricts the exemption to "white-collar" employees who meet the tests. If the work performed is "office" work, it is immaterial whether it is manual or nonmanual in nature. Persons employed in the routine operation of office machines are engaged in office work although they would not qualify as administrative employees.

218.203(2) Rule 218.2(91D) does not completely prohibit the performance of manual work by an "administrative" employee. The performance by an otherwise exempt administrative employee of some manual work which is directly and closely related to the work requiring the exercise of discretion and independent judgment is not inconsistent with the principle that the exemption is limited to "white-collar" employees. However, if the employee performs so much manual work (other than office work) that the employee cannot be said to be basically a "white-collar" employee, the employee does not qualify for exemption as a bona fide administrative employee, even if the manual work performed is directly and closely related to the work requiring the exercise of discretion and independent judgment. An office employee, on the other hand, is a "white-collar" worker, and would not lose the exemption on the grounds that the worker is not primarily engaged in "nonmanual" work, although the worker would lose the exemption if the worker failed to meet any of the other requirements.

SOURCE: 29 CFR 541.203.

875—218.204 Reserved.

875—218.205(91D) Directly related to management policies or general business operations.

218.205(1) The phrase "directly related to management policies or general business operations of the employer or the employer's customers" describes those types of activities relating to the administrative operations of a business as distinguished from "production" or, in a retail or service establishment, "sales" work. In addition to describing the types of activities, the phrase limits the exemption to persons who perform work of substantial importance to the management or operation of the business of the employer or the employer's customers.

218.205(2) The administrative operations of the business include the work performed by so-called “white-collar” employees engaged in “servicing” a business as, for example, advising the management, planning, negotiating, representing the company, purchasing, promoting sales, and business research and control. An employee performing work is engaged in activities relating to the administrative operations of the business notwithstanding that the employee is employed as an administrative assistant to an executive in the production department of the business.

218.205(3) As used to describe work of substantial importance to the management or operation of the business, the phrase “directly related to management policies or general business operations” is not limited to persons who participate in the formulation of management policies or in the operation of the business as a whole. Employees whose work is “directly related” to management policies or to general business operations include those whose work affects policy or whose responsibility it is to execute or carry it out. The phrase also includes a wide variety of persons who either carry out major assignments in conducting the operations of the business, or whose work affects business operations to a substantial degree, even though their assignments are tasks related to the operation of a particular segment of the business.

218.205(4) The “management policies or general business operations” may be those of the employer or the employer’s customers. For example, many bona fide administrative employees perform important functions as advisers and consultants but are employed by a concern engaged in furnishing such services for a fee. Typical instances are tax experts, labor relations consultants, financial consultants, systems analysts, or resident buyers. Employees, if they meet the other requirements of rule 218.2(91D), qualify for exemption regardless of whether the management policies or general business operations to which their work is directly related are those of their employer’s clients or customers or those of their employer.

SOURCE: 29 CFR 541.205.

875—218.206(91D) Primary duty.

218.206(1) The definition of “administrative” exempts only employees who are primarily engaged in the responsible work which is characteristic of employment in a bona fide administrative capacity. Thus, the employee must have as primary duty office or nonmanual work directly related to management policies or general business operations of the employer or the employer’s customers, or, in the case of “academic administrative personnel,” the employee must have as primary duty work that is directly related to academic administration or general academic operations of the school in whose operations the employee is employed.

218.206(2) Reserved.

SOURCE: 29 CFR 541.206.

875—218.207(91D) Discretion and independent judgment.

218.207(1) In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term implies the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.

218.207(2) The term must be applied in the light of all the facts involved in the particular employment situation in which the question arises. It has been most frequently misunderstood and misapplied by employers and employees in cases involving the following:

- a. Confusion between the exercise of discretion and independent judgment, and the use of skill in applying techniques, procedures, or specific standards, and
- b. Misapplication of the term to employees making decisions relating to matters of little consequence.

218.207(3) and **218.207(4)** Reserved.

218.207(5) Final decisions not necessary. The term “discretion and independent judgment” does not necessarily imply that the decisions made by the employee must have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee’s decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment.

218.207(6) Reserved.

218.207(7) Customarily and regularly. The phrase “customarily and regularly” signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretion and independent judgment in the day-to-day performance of the employee’s duties. The requirement is not met by the occasional exercise of discretion and independent judgment.

SOURCE: 29 CFR 541.207.

875—218.208 Reserved.

875—218.209(91D) Percentage limitations on nonexempt work.

218.209(1) An employee will not qualify for exemption as an administrative employee if the employee devotes more than 20 percent, or, in the case of an employee of a retail or service establishment if the employee devotes as much as 40 percent, of the hours worked in the workweek to nonexempt work; that is, to activities which are not directly and closely related to the performance of the work described in 218.2(1) to 218.2(3).

218.209(2) This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

SOURCE: 29 CFR 541.209.

875—218.210(91D) Trainees, administrative. The exemption is applicable to an employee employed in a bona fide administrative capacity and does not include employees training for employment in an administrative capacity who are not actually performing the duties of an administrative employee.

SOURCE: 29 CFR 541.210.

875—218.211(91D) Amount of salary or fees required.

218.211(1) Except as otherwise noted in 218.211(3), compensation on a salary or fee basis at a rate of not less than \$310 a week, exclusive of board, lodging or other facilities, is required for exemption as an administrative employee. The requirement will be met if the employee is compensated biweekly on a salary basis of \$629, semimonthly on a salary basis of \$671.68, or monthly on a salary basis of \$1343.34.

218.211(2) Reserved.

218.211(3) In the case of academic administrative personnel, the compensation requirement for exemption as an administrative employee may be met either by the payment described in 218.211(1), or alternatively by compensation on a salary basis in an amount which is at least equal to the entrance salary for teachers in the school system, or educational establishment or institution by which the employee is employed.

218.211(4) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. These rules do not prohibit the sale of the facilities to administrative employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

SOURCE: 29 CFR 541.211.

875—218.212(91D) Salary basis. The explanation of the salary basis of payment made in rule 218.118(91D) in connection with the definition of “executive” is also applicable in the definition of “administrative.”

SOURCE: 29 CFR 541.212.

875—218.213(91D) Fee basis. The requirements for exemption as an administrative employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis.

SOURCE: 29 CFR 541.213.

875—218.214(91D) Special proviso for high-salaried administrative employees.

218.214(1) Rule 218.2(91D) contains a special proviso including within the definition of “administrative” an employee who is compensated on a salary or fee basis at a rate of not less than \$500 per week exclusive of board, lodging, or other facilities and whose primary duty consists of either the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer’s customers, or the performance of functions in the administration of a school system, or education establishment or institution, or a department or subdivision thereof in work directly related to the academic instruction or training carried on therein, where the performance of the primary duty includes work requiring the exercise of discretion and independent judgment. This highly paid employee having the work as the employee’s primary duty is deemed to meet all the requirements in subrules 218.2(1) to 218.2(5). If an employee qualifies for exemption under this proviso, it is not necessary to test the employee’s qualifications in detail under subrules 218.2(1) to 218.2(5).

218.214(2) Reserved.

SOURCE: 29 CFR 541.214.

875—218.215(91D) Elementary or secondary schools and other educational establishments and institutions. To be considered for exemption as employed in the capacity of academic administrative personnel, the employment must be in connection with the operation of an elementary or secondary school system, an institution of higher education, or other educational establishment or institution. 875—subrules 215.3(5) and 215.3(21) define elementary and secondary schools as those day or residential schools which provide elementary or secondary education, as determined under Iowa law. Education above the secondary school level is included in the programs of institutions of higher education. Special schools for mentally or physically handicapped or gifted children are included among the educational establishments in which teachers and academic administrative personnel may qualify for the administrative exemption, regardless of any classification of such schools as elementary, secondary, or higher. Also, for purposes of the exemption, no distinction is drawn between public or private schools. Accordingly, the classification for other purposes of the school system, or educational establishment or institution, is ordinarily not a matter requiring consideration in a determination of whether the exemption applies. If the work is that of a teacher or academic personnel in an educational system, establishment, or institution, and if the other requirements are met, the level of instruction involved and the status of the school as public or private or operated for profit or not for profit will not alter the availability of the exemption.

SOURCE: 29 CFR 541.215.

875—218.216 to 218.300 Reserved.

BONA FIDE PROFESSIONAL CAPACITY

875—218.301(91D) General. The term “professional” is not restricted to the traditional professions of law, medicine, and theology. It includes those professions which have a recognized status and which are based on the acquirement of professional knowledge through prolonged study. It also includes the artistic professions, such as acting or music. Since the test of the bona fide professional capacity of employment is different in character from the test for persons in the learned professions, an alternative test for these employees is contained in these rules, in addition to the requirements common to both groups.

SOURCE: 29 CFR 541.301.

875—218.302(91D) Learned professions.

218.302(1) The “learned” professions are described in 218.3(1)“a” as those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual, or physical processes.

218.302(2) The knowledge must be of an advanced type. Thus, it must be knowledge which cannot be attained at the high school level.

218.302(3) The knowledge must be in a field of science or learning. This serves to distinguish the professions from the mechanical arts where in some instances the knowledge is of a fairly advanced type, but not in a field of science or learning.

218.302(4) The requisite knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction and study.

SOURCE: 29 CFR 541.302.

875—218.303(91D) Artistic professions.

218.303(1) The requirements concerning the character of the artistic type of professional work are contained in 218.3(1)“b.” Work of this type is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee.

218.303(2) The work must be “in a recognized field of artistic endeavor.” This includes such fields as music, writing, the theater, and the plastic and graphic arts.

218.303(3) The work must be original and creative in character, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training.

218.303(4) Another requirement is that the employee be engaged in work “the result of which depends primarily on the invention, imagination, or talent of the employee.”

SOURCE: 29 CFR 541.303.

875—218.304(91D) Primary duty.

218.304(1) For a general explanation of the term “primary duty” see the discussion of this term under “executive” in rule 218.103(91D). See also the discussion under “administrative” in rule 218.206(91D).

218.304(2) The “primary duty” of an employee as a teacher must be that of activity in the field of teaching. Mere certification by the state, or employment in a school will not suffice to qualify an individual for exemption within the scope of 218.3(1) “c” if the individual is not in fact both employed and engaged as a teacher. The words “primary duty” have the effect of placing major emphasis on the character of the employee’s job as a whole. Therefore, employment and engagement in the activity of imparting knowledge as a primary duty shall be determinative with respect to employment within the meaning of the exemption as “teacher” in conjunction with the other requirements of rule 218.3(91D).

SOURCE: 29 CFR 541.304.

875—218.305(91D) Discretion and judgment.

218.305(1) Under rule 218.3(91D), a professional employee must perform work which requires the consistent exercise of discretion and judgment in its performance.

218.305(2) A prime characteristic of professional work is that the employee does apply the employee’s special knowledge or talents with discretion and judgment. Purely mechanical or routine work is not professional.

SOURCE: 29 CFR 541.305.

875—218.306(91D) Predominantly intellectual and varied.

218.306(1) Rule 218.3(91D) requires that the employee be engaged in work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work.

218.306(2) and **218.306(3)** Reserved.

SOURCE: 29 CFR 541.306.

875—218.307(91D) Essential part of and necessarily incident to.

218.307(1) Subrule 218.3(4) 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 218.3(1) to 218.3(3). 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.

218.307(2) 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.

218.307(3) Reserved.

SOURCE: 29 CFR 541.307.

875—218.308 Reserved.

875—218.309(91D) Twenty 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.

SOURCE: 29 CFR 541.309.

875—218.310(91D) 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.

SOURCE: 29 CFR 541.310.

875—218.311(91D) Amount of salary or fees required.

218.311(1) Except as otherwise noted in 218.311(3), compensation on a salary or fee basis at a rate of not less than \$340 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 biweekly salary of \$680, a semimonthly salary of \$736.66 or a monthly salary of \$1473.34.

218.311(2) Reserved.

218.311(3) The payment of the compensation specified in 218.311(1) is not a requisite for exemption in the case of employees exempted from this requirement by the proviso to 218.3(5), as explained in rule 218.314(91D).

218.311(4) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. These rules do not prohibit the sale of the facilities to professional employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

SOURCE: 29 CFR 541.311.

875—218.312(91D) Salary basis. The salary basis of payment is explained in rule 218.118(91D) in connection with the definition of “executive.”

SOURCE: 29 CFR 541.312.

875—218.313(91D) Fee basis.

218.313(1) The requirements for exemption as a professional (or administrative) employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis.

218.313(2) Reserved.

218.313(3) The adequacy of a fee payment. Whether the fee amounts to payment at a rate of not less than \$340 per week to a professional employee or at a rate of not less than \$310 per week to an administrative employee can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate specified, the amount paid to the employee will be tested by reference to a standard workweek of 40 hours. Thus, compliance will be tested in each case of a fee payment by determining whether the payment is at a rate which would amount to at least \$340 per week to a professional employee or at a rate of not less than \$310 per week to an administrative employee if 40 hours were worked.

SOURCE: 29 CFR 541.313.

875—218.314(91D) Exception for physicians, lawyers, and teachers.

218.314(1) A holder of a valid license or certificate permitting the practice of law or medicine or any of their branches, who is actually engaged in practicing the profession, or a holder of the requisite academic degree for the general practice of medicine who is engaged in an internship or resident program pursuant to the practice of the employee’s profession, or an employee employed and engaged as a teacher in the activity of imparting knowledge, is excepted from the salary or fee requirement. This exception applies only to the traditional professions of law, medicine, and teaching and not to employees in related professions which merely serve these professions.

218.314(2) and **218.314(3)** Reserved.

SOURCE: 29 CFR 541.314.

875—218.315(91D) Special proviso for high-salaried professional employees.

218.315(1) The definition of a “professional” contains a special proviso for employees who are compensated on a salary or fee basis at a rate of at least \$500 per week exclusive of board, lodging, or other facilities. Under this proviso, the requirements for exemption in 218.3(1) to 218.3(5) will

be deemed to be met by an employee who receives the higher salary or fees and whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning, or work as a teacher in the activity of imparting knowledge, which includes work requiring the consistent exercise of discretion and judgment, or consists of the performance of work requiring invention, imagination, or talent in a recognized field or artistic endeavor. Thus, the exemption will apply to highly paid employees employed either in one of the “learned” professions or in an “artistic” profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test that employee’s qualifications in detail under 218.3(1) to 218.3(5).

218.315(2) Reserved.

SOURCE: 29 CFR 541.315.

875—218.316 to 218.499 Reserved.

OUTSIDE SALESPERSON

875—218.500(91D) Definition of “outside salesperson.” The term “outside salesperson” is defined in rule 218.5(91D).

SOURCE: 29 CFR 541.500.

875—218.501(91D) Making sales or obtaining orders.

218.501(1) Rule 218.5(91D) requires that the employee be engaged in:

- a. Making sales within the meaning of 875—subrule 218.5(1), or
- b. Obtaining orders or contracts for services or for the use of facilities.

218.501(2) Generally included are the transfer of title to tangible property and, in certain cases, of tangible and valuable evidences of intangible property. Sales of automobiles, coffee, shoes, cigars, stocks, bonds, and insurance are construed as sales within the meaning of “sale” or “sell” which includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

218.501(3) The exempt work includes not only the sales of commodities, but also “obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.” “Obtaining orders or... for the use of facilities” includes the selling of time on the radio, the solicitation of advertising for newspapers and other periodicals and the solicitation of freight for railroads and other transportation agencies.

218.501(4) The word “services” extends the exemption as outside salespersons to employees who sell or take orders for a service, which is performed for the customer by someone other than the person taking the order. It includes the salesperson of a typewriter repair service who does not personally perform the repairing. It also includes otherwise exempt outside salespersons who obtain orders for the laundering of the customer’s own linens as well as those who obtain orders for the rental of the laundry’s linens.

218.501(5) The inclusion of the word “services” is not intended to exempt persons who, in a very loose sense, are sometimes described as selling “services.” It does not include persons such as service persons even though they may sell the service which they themselves perform. Selling the service in these cases would be incidental to the servicing rather than the reverse. It does not include outside buyers, who in a very loose sense are sometimes described as selling their employer’s “service” to the person from whom they obtain their goods. It is obvious that the relationship here is the reverse of that of salesperson-customer.

SOURCE: 29 CFR 541.501.

875—218.502(91D) Away from employer’s place of business.

218.502(1) Reserved.

218.502(2) Characteristically the outside salesperson is one who makes sales at the customer's place of business. This is the reverse of sales made by mail or telephone (except where the telephone is used merely as an adjunct to personal calls). Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales must be construed as one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. An outside salesperson does not lose the exemption by displaying samples in hotel sample rooms as the salesperson travels from city to city; these sample rooms should not be considered as the employer's places of business.

SOURCE: 29 CFR 541.502.

875—218.503(91D) Incidental to and in conjunction with sales work. Work performed "incidental to and in conjunction with the employee's own outside sales or solicitation" includes not only incidental deliveries and collections which are specifically mentioned in 218.5(2), but also any other work performed by the employee in furthering the employee's own sales efforts. Work performed incidental to and in conjunction with the employee's own outside sales or solicitations would include, among other things, the writing of sales reports, the revision of the employee's own catalog, itinerary planning and attendance at sales conferences.

SOURCE: 29 CFR 541.503.

875—218.504(91D) Promotion work.

218.504(1) Promotion work is one type of activity often performed by persons who make sales, which may be exempt work depending upon the circumstances under which it is performed. Promotion employees are not exempt as "outside salespersons." (This discussion relates solely to the exemption under rule 218.5(91D) dealing with outside salespersons. Promotion employees who receive the required salary and otherwise qualify may be exempt as administrative employees.) However, any promotional work which is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is clearly exempt work. Promotional work which is incidental to sales made, or to be made, by someone else cannot be considered as exempt work.

218.504(2) Distribution through jobbers.

a. Typically, the problems presented involve distribution through jobbers (who employ their own salespersons) or through central warehouses of chain store organizations or cooperative retail buying associations. A manufacturer's representative in these cases visits the retailer, either alone or accompanied by the jobber's salesperson. In some instances, the manufacturer's representative may sell directly to the retailer. In others, the employee may urge the retailer to buy from the jobber.

b. This manufacturer's representative may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. These persons can be considered salespersons only if they are actually employed for the purpose of and are engaged in making sales or contracts. To the extent that they are engaged in promotional activities designed to stimulate sales which will be made by someone else, the work must be considered nonexempt. With these variations in the methods of selling and promoting sales each case must be decided upon its facts. In borderline cases the test is whether the person is actually engaged in activities directed toward the consummation of the employee's own sales, at least to the extent of obtaining a commitment to buy from the person to whom the employee is selling. If the employee's efforts are directed toward stimulating the sales of the company generally rather than the consummation of the employee's own specific sales, the employee's activities are not exempt. Incidental promotional activities may be tested by whether they are "performed incidental to and in conjunction with the employee's own outside sales or solicitations" or whether they are incidental to sales which will be made by someone else.

SOURCE: 29 CFR 541.504.

875—218.505(91D) Driver salespersons.

218.505(1) Where drivers who deliver to an employer's customers the products distributed by the employer also perform functions concerned with the selling of the products, and questions arise as to whether the employee is employed in the capacity of outside salesperson, all the facts bearing on the content of the job as a whole must be scrutinized to determine whether the employee is really employed for the purpose of making sales rather than for the service and delivery duties which the employee performs and, if so, whether the employee is customarily and regularly engaged in making sales and the employee's performance of nonexempt work is sufficiently limited to come within the tolerance permitted by rule 218.5(91D). The employee may qualify as an employee employed in the capacity of outside salesperson if, and only if, the facts clearly indicate that the employee is employed for the purpose of making sales and that the employee is customarily and regularly engaged in the activity within the meaning of the rules. As in the case of outside salespersons whose jobs do not involve delivery of products to customers, the employee's chief duty or primary function must be the making of sales or the taking of orders if the employee is to qualify under the definition in 218.5(91D). The employee must be a salesperson by occupation. If the employee is, all work that the employee performs which is actually incidental to and in conjunction with that employee's own sales effort is exempt work. All other work of the employee is nonexempt work. A determination of an employee's chief duty or primary function must be made in terms of the basic character of the job as a whole. All of the duties performed by an employee must be considered. The time devoted to the various duties is an important, but not necessarily controlling, element.

218.505(2) Reserved.

SOURCE: 29 CFR 541.505.

875—218.506(91D) Nonexempt work generally. Nonexempt work is that work which is not sales work and is not performed incidental to and in conjunction with the outside sales activities of the employee. It includes outside activities like meter reading, which are not part of the sales process. Inside sales and all work incidental thereto are also nonexempt work. So is clerical warehouse work which is not related to the employee's own sales. Similarly, the training of other salespersons is not exempt as outside sales work, with one exception. In some concerns it is the custom for the salesperson to be accompanied by the trainee while actually making sales. Under these circumstances, normally the trainer-salesperson and the trainee make the various sales jointly, and both normally receive a commission. In these instances, since both are engaged in making sales, the work of both is considered exempt work. However, the work of a helper who merely assists the salesperson in transporting goods or samples and who is not directly concerned with effectuating the sale is nonexempt work.

SOURCE: 29 CFR 541.506.

875—218.507(91D) Twenty percent limitation on nonexempt work. Nonexempt work in the definition of "outside salesperson" is limited to "20 percent of the hours worked in the workweek by nonexempt employees of the employer." The 20 percent is computed on the basis of the hours worked by nonexempt employees of the employer who perform the kind of nonexempt work performed by the outside salesperson. If there are no employees of the employer performing this nonexempt work, the base to be taken is 40 hours a week, and the amount of nonexempt work allowed will be 8 hours a week.

SOURCE: 29 CFR 541.507.

875—218.508(91D) Trainees, outside salespersons. The exemption is applicable to an employee employed in the capacity of outside salesperson and does not include employees training to become outside salespersons who are not actually performing the duties of an outside salesperson.

SOURCE: 29 CFR 541.508.

875—218.509 to 218.599 Reserved.

SPECIAL PROBLEMS

875—218.600(91D) Combination exemptions.

218.600(1) These rules permit the “tacking” of exempt work under one rule to exempt work under another rule, so that a person who, for example, performs a combination of executive and professional work may qualify for exemption. In combination exemptions, however, the employee must meet the stricter of the requirements on salary and nonexempt work.

218.600(2) Reserved.

SOURCE: 29 CFR 541.600.

875—218.601(91D) Special provision for motion picture producing industry. Under rule 218.6(91D), the requirement that the employee be paid “on a salary basis” does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$500 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under rule 218.1(91D), 218.2(91D) or 218.3(91D) and who is employed at a base rate of at least \$500 a week is exempt if the employee is paid at least pro rata (based on a week of not more than six days) for any week when the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances:

218.601(1) The employee is in a job category for which a weekly base rate is not provided and the employee’s daily base rate would yield at least \$500 if six days were worked; or

218.601(2) The employee is in a job category having a weekly base rate of at least \$500 and the employee’s daily base rate is at least one-sixth of such weekly base rate.

SOURCE: 29 CFR 541.601.

875—218.602(91D) Special proviso concerning executive and administrative employees in multistore retailing operations.

218.602(1) The tolerance of up to 40 percent of the employee’s time which is allowed for nonexempt work performed by an executive or administrative employee of a retail or service establishment does not apply to employees of a multiunit retailing operation, such as a chain store system or a retail establishment having one or more branch stores, who perform central functions for the organization in physically separated establishments such as warehouses, central office buildings or other central service units or by traveling from store to store. Nor does this special tolerance apply to employees who perform central office, warehousing, or service functions in a multiunit retailing operation by reason of the fact that the space provided for such work is located in a portion or portions of the building in which the main retail or service establishment or another retail outlet of the organization is also situated. These employees are subject to the 20 percent limitation on nonexempt work.

218.602(2) With respect to executive or administrative employees stationed in the main store of a multistore retailing operation who engage in activities (other than central office functions) which relate to the operations of the main store, and also to the operations of one or more physically separated units, such as branch stores, of the same retailing operation, the division will, as an enforcement policy, assert no disqualification of the employee for the 875—subrule 215.4(1) exemption by reason of nonexempt activities if the employee devotes less than 40 percent of work time to nonexempt activities. This enforcement policy would apply, for example, in the case of a buyer who works in the main store of a multistore retailing operation and who not only manages the millinery department in the main store, but is also responsible for buying some or all of the merchandise sold in the millinery departments of the branch stores.

SOURCE: 29 CFR 541.602.

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