

conjunction with an employee's own outside sales or solicitations is exempt work. On the other hand, promotional work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work.

(b) A manufacturer's representative, for example, 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. Such an employee can be considered an exempt outside sales employee if the employee's primary duty is making sales or contracts. Promotion activities directed toward consummation of the employee's own sales are exempt. Promotional activities designed to stimulate sales that will be made by someone else are not exempt.

(c) Another example is a company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, consults with the store manager as to the requirements of the store, fills out a requisition for the quantity wanted, but leaves the requisition with the store manager to be transmitted to the central warehouse of the chain store company which later ships the quantity requested. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Because the employee in this instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work in this example is not exempt.

§ 541.504 Drivers who sell.

(a) Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. If the employee has a primary duty of making sales, all work performed incidental to and in conjunction with the employee's own sales efforts, including loading, driving or delivering products, is exempt work.

(b) Several factors should be considered in determining if a driver has a primary duty of making sales, including: a comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when such license is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amounts of products to be delivered; description of the employee's occupation in collective bargaining agreements; the employer's specifications as to qualifications for

hiring; sales training; attendance at sales conferences; method of payment; and proportion of earnings directly attributable to sales.

(c) Drivers who may qualify as exempt outside sales employees include:

(1) A driver who provides the only sales contact between the employer and the customers visited, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or procures and delivers the product to the customer on a later trip, and who receives compensation commensurate with the volume of products sold.

(2) A driver who obtains or solicits orders for the employer's products from persons who have authority to commit the customer for purchases.

(3) A driver who calls on new prospects for customers along the employee's route and attempts to convince them of the desirability of accepting regular delivery of goods,

(4) A driver who calls on established customers along the route and carrying an assortment of the employer's products who persuades regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery was made by someone else.

(d) Drivers who generally would not qualify as exempt outside sales employees include:

(1) A route driver whose primary duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition, and in good locations does not have a primary duty of making sales.

(2) A driver who often calls on established customers day after day or week after week, delivering a quantity of the employer's products at each call when the sale was not significantly affected by solicitations of the customer by the delivering driver or the amount of the sale is determined by the volume of the customer's sales since the previous delivery.

(3) A driver primarily engaged in making deliveries to customers and performing activities intended to promote sales by customers (including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves, in coolers or in cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases), unless such work is in furtherance of the driver's own sales efforts.

Subpart G—Compensation Requirements

§ 541.600 Amount of salary required.

(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than \$425 per week (or \$360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities.

Administrative and professional employees may also be paid on a fee basis, as defined in § 541.605.

(b) The \$425 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 \$850, semimonthly on a salary basis of \$920.84, or monthly on a salary basis of \$1,841.67. However, the shortest period of payment that will meet this compensation requirement is one week.

(c) In the case of academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in § 541.206(a)(1).

(d) In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than \$27.63 an hour, as provided in § 541.400(a).

(e) In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (§ 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (*see* § 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (*see* § 541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

§ 541.601 Highly compensated employees.

(a) An employee who performs office or non-manual work and is guaranteed a total annual compensation of at least