

Under the Fair Labor Standards Act, bona fide exempt managers may attend a seven-week training course without losing their exempt status during the training, the Department of Labor's Wage and Hour Division has advised in an opinion letter (FLSA2008-19). Employees whose "primary duty" is performing managerial tasks are exempt from the overtime provisions of the FLSA. The WHD concluded that participating in a training course need not alter the managers' exempt status.

The inquiring employer presented the WHD, the agency responsible for enforcing the FLSA, with the following scenario: Each year, a number of high-performing exempt Store Managers are selected by the employer to participate in a seven-week training program to become eligible for promotion to the Area Sales Manager position (also an exempt position). During the training period, each Store Manager accompanies an area sales manager while the Area Sales Manager goes about his or her duties. The trainees would spend less than half of their time performing exempt duties during the first several weeks of training, but the time performing exempt duties increases as the training progresses. The participants' salary is maintained or increased during the training period. Trainees who fail to complete the program are allowed to continue working in their position as Store Manager. Trainees who successfully complete the program resume their duties as Store Managers until an Area Sales Manager position becomes available and the trainee is selected for promotion to the vacancy.

The WHD found that the temporary suspension of exempt duties did not alter the Store Managers' exempt status "because the primary duty test for executives need not be met each and every workweek in all cases." Moreover, participating in the seven-week training program is not an employment position in the company, the WHD noted.

"This opinion letter reflects the agency's continued efforts to restore common sense to analyzing exemptions," observed Paul DeCamp, national chair of the Wage and Hour Practice Group at Jackson Lewis and former Administrator of the Wage and Hour Division. "It simply does not further the policies of the FLSA to require exempt executive employees who undergo a relatively brief training period to become even higher-level exempt executive employees to be paid hourly, punch a clock, and receive overtime during their training," he noted. Although state laws may differ, this opinion letter charts a course that should be viable in most jurisdictions.