

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENTLEGAL SECTION
455 Golden Gate Avenue, Room 3166
San Francisco, CA 94102
(415) 703-4150H. THOMAS CADELL, JR., *Chief Counsel*

July 6, 1992

Richard J. Simmons, Esq.
Musick, Peeler & Garrett
One Wilshire Blvd.
Los Angeles, CA 90017-3321Re: **Professional Exemptions**

Dear Mr. Simmons:

Your letter of February 28, 1992, directed to the Labor Commissioner has been referred to this office for review. In your letter you ask the Division's opinion on the question of the extension of the professional exemption to "licensed social workers."

As you know, in adopting the "learned and artistic" exemption, the IWC suggested to the DLSE that it might, if it desired, look to the appropriate regulations adopted by the United States Department of Labor to delimit and enforce the "learned and artistic" professions provisions. As you know, the Department of Labor adopted and defined¹ the terms "learned and artistic" as subclassifications of the "professional" exemption for enforcement purposes. The definition, for purposes of the IWC Orders, was designed to expand the term "professionals" to include individuals engaged in occupations other than the licensed occupations listed.

The DLSE has chosen to adopt those portions of the Code of Federal Regulations which may appropriately be used in conjunction with the IWC Orders. Except as to the definitions of "teacher" and "nurse", the federal rules defining "learned professions" currently used by the Department of Labor are used by the DLSE for enforcement purposes. Other provisions of the Federal Regulations are not used because they rely upon provisions of the FLSA or of the Regulations which are inimical to the clear intent of the IWC.

This explanation brings us to the question which you pose: Does an individual possessing a master's degree from an accredited school of social work and/or is a California-licensed clinical

¹The FLSA specifically grants DOL the authority to make such definitions of the word "professional". 29 USC 213(a)(1).

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social worker qualified for the exemption provided by the applicability provisions of IWC Order 5-89? The answer is yes.

As the federal regulations make clear, "the 'learned' professions are defined 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."

The provisions of 29 CFR §541.302(e)(2)² are, we feel, a correct explanation of the situation described by the IWC. The areas in which professional exemptions may be available are expanding. After reviewing the criteria, we feel that a social worker who 1) either possesses a master's degree in social work from an accredited school of social work and/or is licensed by the State of California as a clinical social worker, and 2) is engaged³ in the practice of the profession for which they are trained, is exempt.

I hope this adequately addresses the questions you raised in your letter of February 28, 1992. Please excuse the delay in responding to your inquiry.

Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw

² We should note at this point that we do not feel that the provisions of 29 CFR §541.314(c) which you cite are relevant. That section is discussing the salary or fee requirements which the Department of Labor has adopted for enforcement purposes. The IWC Orders do have a remuneration provision but do not contain a salary requirement. In addition, unlike the Congressional mandate in the FLSA, the IWC has not indicated that the DLSE should have the authority to adopt a salary test for enforcement purposes. As you may know, there is no remuneration test for either the "professional" or the "learned and artistic" exemptions adopted by the IWC.

³ The term used in the applicability section is "engaged in" and the word is not limited in any way. Unlike the FLSA provisions which exempt those who are "employed in" specific occupations, the IWC Orders speak in terms of the individual being "engaged in work" or "engaged in the practice" of a profession. Therefore, the federal regulations in this regard are not applicable. Since the phrase "engaged in" is not limited, DLSE takes the position that in order to qualify for the exemption, the employee must be "engaged in" the practice of the profession 100% of his or her time.

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