

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

May 8, 1972

Madge E. Ames, Director Min. Wage

Labor and Industry

Leon V. Walker, Jr., Assistant

Attorney General

**Executive or Administrative Wage Exemption for  
Saco Deputy Fire Chiefs**

**SYLLABUS:**

Deputy fire chiefs of a municipality who are paid at the same hourly minimum rate as the regular firefighters, but who are required to attend drills and fires in off-duty hours, along with the regular firefighters, but are not paid for these extra hours (although the firefighters are) and who have no executive, administrative or professional duties other than to supervise the regular firefighters in the absence of the Chief, are not exempted from the provisions of the Minimum Wage Law by the provisions of 26 M.R.S.A. § 663, sub § 3, K, which exempts "any individual employed in a bona fide executive, administrative, or professional capacity, and who is paid on a salary basis."

**FACTS:**

The City of Saco employs a Fire Chief, two Deputy Chiefs and eleven regular firefighters. The Deputy Chiefs are paid the minimum wage of \$1.80 per hour, which for the regular work cycle amounts to more than \$100 weekly. However, the regular firefighters are paid at the same rate. Both the firefighters and the Deputies are required to report for fires in their off-time and to report for drills. The firefighters are paid the minimum wage for this extra time, but the Deputies are not because the City regards them as salaried executives within the exemption provided in 26 M.R.S.A. § 663, sub § 3, paragraph K.

The Deputy Chiefs have no authority to hire and fire, do not order supplies or equipment, but do supervise the firefighters in the absence of the Chief. In the matter of sick leave and vacations, they are treated the same as the regular firefighters.

**QUESTION:**

Are these Deputy Chiefs exempt from the provisions of the minimum wage law as executive, administrative or professional personnel paid on a salary basis of not less than \$100 weekly?

**ANSWER:**

No.

**REASON:**

26 M.R.S.A. § 663, sub § 7, provides that members of municipal fire fighting departments, other than volunteer or call-departments, who are paid regular salaries or regular wages, are deemed to be employees within the minimum wage law.

26 M.R.S.A. § 663, sub § 3, paragraph K, exempts "any individual employed in a bona fide executive, administrative, or professional capacity, and who is paid on a salary basis of . . . not less than \$100 weekly."

To be exempt under § 663, sub § 3, K, the Deputy Chiefs must be (1) employed in a bona fide executive, administrative or professional capacity, and (2) paid on a salary basis of not less than \$100 weekly.

Definitions of the terms "executive", "administrative" and "professional" are found in Black's Law Dictionary, 4th Edition, which in essence state:

An executive is a person whose duties relate to active participation in the control, supervision, and management of business.

A person employed as an administrator is one whose job it is to discharge the duties of an office; to manage or conduct; to take charge of a business and to manage its affairs; to serve in the conduct of affairs.

A person employed in a professional capacity is one who is practicing a vocation or occupation involving skill, education or special knowledge, which skill or labor is predominantly mental or intellectual rather than physical or manual.

May 8, 1972

In view of the facts given in your memorandum, it seems clear that these Deputy Chiefs are not employed "in a bona fide executive, administrative or professional capacity" as these terms are defined above.

In addition, for these Deputies to be exempt from the provisions of the Minimum Wage Law, they must be paid "on a salary basis." Sec. 663, subsection 7, provides that members of municipal fire fighting departments, who are paid salaries or regular wages, are deemed to be employees under the Minimum Wage Law. This provision, together with the language of sub § 3, K, and the fact that only with respect to firemen does the Minimum Wage Law refer to salaries, indicates that the word "salary" is intended to mean something other than "wages."

In Webster's New International Dictionary, 2d Ed., "salary" is defined as the recompense paid to a person at regular intervals for services, especially to holders of official or executive positions; a fixed compensation regularly paid, as by the year, quarter, month or week; a stipend, now often distinguished from wages. "Wages" is pay given for labor, usually manual or mechanical, at short stated intervals, as distinguished from salaries.

The Deputies we are concerned with are paid on the same basis (at the minimum hourly wage) as the regular firefighters in the department. The pay they receive is clearly wages, not salary.

It is our opinion, therefore, that these Deputies are employees under the Minimum Wage Law, and not exempt under the provisions of § 663, sub § 3, K.

LVWJr:H

Leon V. Walker, Jr.  
Assistant Attorney General