

**Opinion No. 57-248**

September 27, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,  
Assistant Attorney General

**TO:** Mr. C. W. Burrell, State Labor Commissioner, Santa Fe, New Mexico

**QUESTION**

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Is a retail sales clerk, employed for a 48 hour week, paid a minimum weekly wages of \$ 30.00, plus commissions on sales, exempt from the Minimum Wage Act?

CONCLUSION

No.

**OPINION**

ANALYSIS

Section 59-3-21 (d) -- (6), listing exemptions from "employee" under the Act, provides:

"Salesmen or employees compensated upon piecework, flat-rate schedules or commission basis,"

Section 59-3-22 provides in part:

"Every employer, except as provided in the foregoing section (59-3-21) shall pay to each of his employees wages at a rate of not less than seventy-five cents (\$ .75) per hour . . ."

The crux of the question would appear to encompass the inclusion of part wage and part commission compensation employees as being included in § 59-3-21 (d) -- (6) as "commission basis", hence exempted from the Act, or the revision thereof.

No cases on this point being found anywhere in the United States, we are compelled to have recourse to analogy and logic.

The fact that the word "wholly" is omitted, in § 59-3-21 (d) -- (6), gives rise to the presumption that the legislative intent is that part wage and part commission employees are exempt under the Act.

Opposing this holding appears to be the expressions of policy reflected in *Graham v. Miera*, 59 N.M. 379, 285 P.2d 493, a case not in regard to the Minimum Wage Act, but under the Unemployment Compensation Law. In that case, and the same will be found in numerous out-of-state holdings, we find general phraseology to the following effect:

"The unemployment compensation law calls for liberal construction to the end that remedial and humanitarian purposes may be given effect . . ."

This statement is equally true of the Minimum Wage Act -- it also being "remedial and humanitarian" in purpose. Hence, we are compelled to counter logic with the desirability of covering all doubtful employment instances with the protection of the Minimum Wage Act.

It is too strongly held to require supporting citation that a "remedial and humanitarian" statute is to be broadly construed, and exceptions thereto, in application, be narrowly construed.

Hence, in the absence of legislative clarification, we are of the opinion the question is to be answered in the negative.