



November 4, 2005

FLSA2005-47

Dear *Name**,

This is in response to your letter concerning the proper computation of overtime under the Fair Labor Standards Act (FLSA) when non-exempt employees are promised retention benefits, including a Stay Bonus.

You write that in 2002, the *Name** you represent offered a program of retention benefits to encourage employees to remain at a particular facility from June 6, 2002 through September 21, 2004. Employees have three options for the payout of the Stay Bonus that they earned, including: a) full payment of the Stay Bonus on October 10, 2004; b) deferred payment of the Stay Bonus until a future date, no later than January 2016, accruing interest at the rate of 4% per annum; or c) continuous equal monthly payments of the Stay Bonus beginning October 10, 2004, until the complete benefit is paid.

You are correct in understanding that the Stay Bonus is a nondiscretionary bonus and pursuant to section 7(e) of the FLSA, in the case of non-exempt employees, must be included when the employer computes the employees' regular rate of pay for purposes of overtime pay. "Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay." 29 C.F.R. § 778.211(c). As explained in 29 C.F.R. § 778.209 (copy enclosed), the bonus amount must be "apportioned back over the workweeks of the period during which it may be said to have been earned" resulting in adjustment of the regular rate and the payment of additional overtime in accordance with the adjusted regular rate of pay. See FOH 32c03(b) (copy enclosed). This is true under each payment option described above, and as you stated, the proper adjustment period in this case is June 6, 2002 through September 21, 2004.

You are also correct in your belief that the 4% interest on deferred Stay Bonus payments should not be treated as wages when retroactively adjusting overtime. This payment is more akin to interest on a loan from the employee to the employer or interest on an employee's investment in a savings account operated by the employer. The interest payments are unrelated to hours worked and are reasonably approximate to interest rates generally available. Therefore, the interest payments are not compensation under the FLSA. See section 7(e)(2) of the FLSA and 29 C.F.R. § 778.224 (copies enclosed).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor. This opinion letter is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. 259. See 29 C.F.R. 790.17(d), 790.19; Hultgren v. County of Lancaster, Nebraska, 913 F.2d 498, 507 (8th Cir. 1990).



We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosures: 29 C.F.R. §§ 778.209, 778.224
FOH 32c00(b); 32c03(b)
WH Opinion Letter January 23, 1997
Section 7(e)(2) of the FLSA

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*