

FLSA-199

September 16, 1970

This is in further reply to your letter of February 20, 1970, concerning the application of section 7(j) of the Fair Labor Standards Act to one of your clients who operates a business which provides temporary help to hospitals.

You specifically ask whether section 7(j) applies to your client's employees who during a 14-day period work exclusively for a hospital or hospitals operating under section 7(j) of the Act. You say that we may assume that your client's employees and the employees of the hospital or hospitals in question have agreed to the 14-day work period in accordance with the requirements of section 7(j).

Employees of your client's temporary help company working on assignments in hospitals are joint employees of both the temporary help company and the hospital in which they are employed. In enforcing the Act, we would not take exception to a claim by a hospital that section 7(j) applies during any 14-day period where any of your client's employees work exclusively for a single hospital, and if before performance of the work an agreement is made between the hospital and the employee to use the 14 consecutive workday period in lieu of the usual seven day workweek. This position is taken without prejudice to the rights of individual employees to take action under section 16(b) of the Act.

On the other hand, section 7(j) will not apply to any employee who during a 14-day work period is employed in more than one hospital, even though all the hospitals in question may be operating under section 7(j) with respect to their regular employees. Under the statutory language of section 7(j), acceptance of the 14-day work period in lieu of a seven day workweek must be made by agreement between the employee and an employer "engaged in the operation of a hospital." Such an arrangement cannot be made between the employee and the temporary help agency, which is not engaged in operating a hospital. Since a particular hospital would only be one of a number of joint employer hospitals, each of which employs the employee for less than the full 14-day period, it could make a valid commitment only for the day or days during which the employee is under its jurisdiction rather than for the full 14-day period required by the statute. A hospital cannot be expected to have a record of the hours worked by the employee in any other institution, nor can it presume the existence of a valid 7(j) agreement between the employee and preceding or subsequent joint employers during the 14-day period.

If you should have any further questions concerning the application of the Fair Labor Standards Act, you may find it more convenient to get in touch with our Area Office at ***. That office will be pleased to offer every possible assistance.

Sincerely,

Robert D. Moran
Administrator

Enclosures