

FLSA-304

November 11, 1974

This is in reply to your letter of July 8, 1974, requesting information on the application of the recently amended Fair Labor Standards Act to individual "babysitters" who are paid by the county welfare department for child-care service they provide in the parents' home. Your letter indicates that arrangements for such service are made between the parent and the babysitter, with the county providing financial assistance only.

Whether these babysitters are "employees" of the county welfare department and, as such, entitled to be paid (by the Department) a minimum wage of at least \$1.90 an hour and overtime pay for hours worked over 40 in a week depends upon the nature of the relationship between the welfare department and the babysitter. On the basis of the available information, it would be our opinion that, if the parent selects and, in fact, is free to select and make the necessary arrangements with the babysitter, an employer-employee relationship would not exist for purposes of the Act as between the county welfare department and the babysitters. The fact that the funds for such service are provided by the county with the payment going directly to the babysitter would not alter this position as the parent and not the welfare department controls and supervises the work of the babysitter.

The above position notwithstanding, it should be pointed out that the law's monetary provisions would apply to any full time child-care service performed in or about the private household of the parent by whom the babysitter is employed to perform such service. Babysitting is a form of domestic service and babysitters other than those working on a casual basis are entitled to the same benefits under the Act as other domestic employees. Thus, in your situation, since the "babysitting" is performed in the parent's own home, although the county has undertaken to finance such service, the babysitter is entitled to payment in an amount equal to at least the minimum wage required by law, i.e., \$1.90 an hour for all hours worked and overtime compensation if more than 40 hours is worked in a workweek. Such payment must be made by the parent or the county on the parent's behalf. We wish to point out also, that the Act's wage provisions would not apply to such a babysitter engaged by the parent to perform such service in the babysitter's own home since then the work would not be performed in or about the private household of the parent by whom he or she is employed.

We regret the delay in responding to your letter.

Sincerely,

Betty Southard Murphy
Administrator
Wage and Hour Division

