

FLSA-225

August 29, 1978

This is in reply to your letter dated July 12, 1978 requesting an opinion under the Fair Labor Standards Act on whether your client's "on-call" time is hours of work and if a certain wage payment system complies with the Act.

You state that your client's employees work a standard 40 hour schedule, Monday through Friday. In addition, each employee is required to be on-call for an additional specifically designated four hour time period on Saturday. Rarely are the employees informed that they will not be on weekend on-call status. While on-call, each employee must remain at home to be able to report to work within 15 minutes. (We assume that all employees reside within 15 minutes distance to the workplace.) You state this on-call system does not fit within section 785.17 of 29 CFR Part 785 or any opinion letters or court cases you reviewed on the subject. In any event, the employer treats this on-call time as compensable hours of work. Your client pays each employee for 44 hours, 40 hours at the straight-time rate and 4 hours at the overtime rate of one and one-half times the regular rate; the latter 4 hours of pay for the on-call time, whether worked or not. You also state if additional overtime is worked during the workweek the employees are compensated for it at the same overtime rate.

It is our position that employees who are not required to remain on the employer's premises and are free to engage in their own pursuits, subject only to the understanding that they be able to report to work within a reasonable time limit, are not working while on-call. In this regard, see Pilkenton v. Appalachian Hospital, (20 Wage-Hour Cases 421, 336 F. Supp. 334) and the enclosed Wage-Hour Opinion letter dated August 14, 1968.

Sums received by employees for "on-call" time not worked are regarded as being paid as compensation for performing a duty involved in their jobs and must, therefore be included in the employee's regular rate of pay for the purposes of computing overtime compensation under the Act.

Sections 778.108 and 778.223 of 29 CFR Part 778, copy enclosed, describe how the regular rate is computed and how on-call pay is to be treated for purposes of overtime compensation. Thus, with respect to your client's wage payment system, situations A, B, and C presented in your letter reflect computations which comply with the law.

However, regarding situation D, the proper gross pay should be \$287.50. The computation is as follows: on-call pay for 4 hours "on-call" time equals \$33.00 ($\$5.50 \times 1.5 \times 4$). Forty four hours worked times \$5.50 equals \$242.00 or a total straight time pay of \$275.00 ($\$33.00 + \242.00). Two hundred seventy five dollars divided by 44 hours equals a regular straight-time rate of pay of \$6.25 per hour. Four hours at 1/2 ($\$6.25$) equals \$12.50 which, added to \$275.00 results in a total compensation of \$287.50.

Sincerely,

Xavier M. Vela
Administrator

Enclosures