

FLSA-628

September 17, 1980

Thank you for your letters regarding an employer's use of the cash value of room and board furnished employees when computing their hourly rate of pay. You ask if it was appropriate to use room and board furnished employees as part of an employee's compensation under the Fair Labor Standards Act.

Section 3(m) of the Act provides that the "Wage paid to any employee includes the reasonable cost, as determined by the Secretary of Labor to an employer of furnishing such employee with board, lodging, or other facilities if such board, lodging, or other facilities are customarily furnished by such employer to his employees: Provided, that the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee"

As stated in section 531.29 of 29 CFR Part 531, copy enclosed, the use of the word "furnishing" and the legislative history of section 3(m) of the Act clearly indicate that section 3(m) was intended to apply to all facilities furnished by an employer as compensation to employees, regardless of whether an employer calculates charges for such as additions to or deductions from wages. Section 531.31 of Part 531 explains that where such facilities are "furnished" to an employee, it will be considered a sufficient satisfaction of this requirement if the facilities are customarily furnished by other employers engaged in the same or similar trade, business, or occupation in the same or similar communities.

The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where customarily "furnished" to an employee. Not only must an employee receive the benefits of the facility for which he or she is charged, but it is essential that his or her acceptance of the facility be voluntary and uncoerced; in this connection, see Section 531.30 of Part 531.

Since health care facilities engaged in providing care to mentally retarded persons customarily and regularly furnish room and board to their staff, it is appropriate to use room and board as part of an employee's compensation. Provided, that the hourly cash wage offset is not claimed for hours of work in excess of those hours used to compute the hourly allotment of such facilities. For example, an employer determines that the reasonable cost or fair value of board furnished to an employee is \$120, divides \$120 by the number of hours worked in a month (4.33 weeks times 40 hours equals 173.32 hours), and claims the resulting hourly allotment for the first 40 hours of work each week. In such a case, where an employee works more than 40 hours in a workweek an employer cannot claim a credit for the hours worked in excess of the 40 hours, since the cash value of the board furnished an employee has already been fully allocated. Further, as explained in Section 531.37(b) of Part 531, where board, lodging or other facilities are

customarily furnished as an addition to, or as a deduction from a cash wage, the reasonable cost of the facilities to an employer is part of an employee's regular rate of pay when computing the overtime compensation.

However, you may recall our previous opinion in response to your inquiry of March 1980, regarding meals furnished staff members of residential programs who provide general supervision, guidance and serve as a role model to their clients, copy enclosed. If the same or similar conditions prevail with respect to employees employed under the employment agreement, it would not be appropriate to use the board as part of an employee's compensation under the Fair Labor Standards Act.

Sincerely,

\s\ Herbert J. Cohen
Assistant Administrator

Enclosures