

FLSA-1060

January 28, 1982

This is in reply to your letter of December 23, 1981, requesting an opinion concerning overtime compensation. You state that your client is a voluntary hospital which compensates its registered nurses under an "8/80" overtime plan on a per diem pay basis. This institution has three separate 8-hour work shifts for its nurses which fall within each 24-hour period. You are concerned as to when overtime is due for work over 8 hours in a workday.

A workday is 24 consecutive hours beginning at the same time each calendar day. A workweek consists of 168 consecutive hours (i.e., seven consecutive 24-hour workdays), beginning at the same hour and on the same calendar day each calendar week. The workweek may begin at any hour and on any day designated by the employer. The first workday begins at the time the workweek begins and the seventh workday ends at the time the workweek ends. While neither the workday nor the workweek need coincide with the calendar day or calendar week, both, like the calendar periods, are fixed and regularly recurring periods. When one workday or workweek ends another immediately begins. The employer, however, is not precluded from changing the time at which the workday or workweek begins, if the change is intended to be permanent and is not intended to evade the overtime requirements of the Act.

Thus, in answer to question (a), the workday does not necessarily begin with the very first hour worked by an employee on a given shift. It begins each day at the hour when the first workday of the workweek began and ends 24 hours later. In answer to question (b), if the two shifts were worked in the same workday, as defined above, the employee would be due overtime premium pay for all hours worked over 8 in the workday. Finally, in answer to question (c), the workday would not automatically change depending upon performing work in different workweeks but would remain fixed and recurring.

We hope the above has been responsive to your inquiry. If you have any further questions, please feel free to contact this office any time.

Sincerely,

William M. Otter
Administrator