

FLSA 1234

July 12, 1985

This is in reply to your letter of June 14 asking on behalf of your client, a county located in the ***, if board, lodging, and other goods and facilities furnished to employees must be included when computing the employees' regular rates when calculating the overtime premium pay due them under the Fair Labor Standards Act (FLSA).

You state that your client employs married couples to serve as houseparents in a program designed to provide housing, care, counseling, and treatment for wayward and disturbed children. The employer requires the married couples, during the time they are on duty, to live in a county-owned residence with the children. Under the present arrangement the houseparents are on duty 22 hours per day, 5 days per week. You have provided your client with several recommendations as to how the number of hours worked by the houseparents may be reduced.

The facts are that when the houseparents are on duty, they reside on the employer's premises and consume 3 meals per day with the children without cost. The houseparents are also furnished, without cost, maintenance of their lodging facilities, utilities, and certain useful household articles. You indicate that a small minority of the houseparents have permanent residences elsewhere in the community and reside on the employer's premises only while they are on duty because of the employer's requirement that they do so. Additionally, a small number of the houseparents have a vacation cottage which is not their primary or permanent residence but to which they may go when not on duty. However, the majority of the houseparents have no other residence and use the county-owned facilities as their permanent residences even when they are not on duty.

You are familiar with the U.S. Department of Labor (the Department) regulations 29 CFR Part 531 which describe the conditions under which board, lodging, and other facilities may be considered wages under section 3(m) of FLSA. Your client would prefer not to consider the facilities furnished to the houseparents as part of the wages they are paid. The principal reasons for this preference are the recordkeeping difficulties, the impact on employee relations, and the fact that in some instances no wage credit may be allowed under FLSA for the facilities.

You point out that section 778.116 of the Department's "Interpretative Bulletin on Overtime Compensation," 29 CFR Part 778, explains that lodging, board, and other goods and facilities furnished to an employee by an employer must be included when computing the employee's regular rate for overtime pay purposes if the lodging, board, and other facilities are regarded as part of the wages paid to the employee. However, that explanation does not go on to state what appears logical to you, i.e., if the lodging, board, and other facilities are furnished to an employee by the employer, but are not regarded by the employer or the employee as part of wages, the value of the items need not then be included when computing the employee's regular rate.

Therefore, your client wants a ruling specifying that if there is a bona fide cash wage being paid to an employee which meets the requirements of FLSA, and which is agreeable to the employee, the employer need not include the reasonable cost of the lodging, board, and other goods and facilities when computing the employee's regular rate if the employer is not taking a wage credit for these items. You suggest that this result could be reached if these items are considered to be a payment which is "not made as compensation for * * * hours of employment" as set forth in section 7(e)(2) of FLSA.

Section 7(e)(2) of FLSA provides that the term regular rate shall not be deemed to include payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses or other expenses incurred by an employee in the furtherance of his or her employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his or her hours of employment.

As explained in section 778.217(d) of Part 778, the expenses for which reimbursement is made must be expenses incurred by the employee on the employer's behalf or convenience. If the employer reimburses the employee for expenses normally incurred by the employee for his or her own benefit, the employer is, of course, increasing the employee's regular rate. An employee normally incurs expenses in traveling to and from work, buying lunch, paying rent, and other similar expenses. If the employer reimburses the employee for these normal everyday expenses the payment is not excluded from the regular rate as "reimbursement for expenses." Whether the employer "reimburses" the employee for these expenses or furnishes the facilities (such as free lunches or free housing), the amount paid to the employee (or the reasonable cost to the employer or fair value where facilities are furnished) must be included when computing the employee's regular rate for overtime pay purposes. Therefore, we cannot reach the result your client desires.

We trust the above is responsive to your inquiry.

Sincerely,

Herbert J. Cohen
Deputy Administrator