

## **FLSA-744**

August 26, 1985

This is in further reply to your letters of April 16 and July 16 in which you request an opinion under the Fair Labor Standards Act (FLSA) as to whether certain time spent by a client hospital's employees in an "on-call" status is compensable under the Act.

The hospital, located in a small city surrounded by a predominantly rural area, provides a wide variety of health care services, including acute and catastrophic medical care. In order to ensure adequate coverage, the hospital maintains certain nonexempt employees in an on-call status for which they receive a stipend in addition to their regular compensation. The employees are not required to remain on the hospital's premises or at any other specified location while on-call. However, they are expected to be able to report back to the hospital within 20 to 30 minutes of the time the hospital calls them in to work.

The on-call period may extend to a maximum of 18 hours in a weekday and approximately 64 hours if an employee is on call for an entire weekend. The hospital compensates employees for all hours worked after they report back to the establishment.

You ask if the time spent by the hospital's employees in an on-call status as described above would be considered to be "hours worked" under FLSA. You also ask if our answer would be different if an employee lives beyond the 20- to 30-minute travel area and is expected to arrange to remain within such an area during the on-call period.

The FLSA is the Federal law of most general application concerning wages and hours of work. It requires that all covered and nonexempt employees be paid not less than the current minimum wage of \$3.35. an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

Whether hours spent on-call are compensable hours of work is a question of fact to be decided in the context of a given case. As explained in section 785.17 of 29 CFR 785, an employee who is not required to remain on the employer's premises but is merely required to leave word where he or she may be reached is not working while on-call. Where an employee who is on-call is free to come and go as he or she pleases, and is also free to engage in personal activities during periods of idleness when he or she is subject to call, such time is not hours worked. Accordingly, such on-call time need not be compensated. These principles would also apply where an employee is required to carry a paging device and telephone in or report to work within a specified period of time. However, if calls are so frequent or the on-call conditions so restrictive that the employee cannot effectively use on-call time for his or her own purposes, the on-call waiting time would be counted as hours worked.

It is difficult to reply unequivocally to the question of what constitutes restrictive on-call conditions. Whether 20 to 30 minutes or any other period of time is ample to provide an employee freedom to follow his or her own pursuits while on-call is a question of fact that can be determined only after a careful examination of all the facts in a given case. For example, if the employee is required to use public transportation, the 20-to-30-minute period may be restrictive, whereas if he or she travels by private automobile, such period would not be restrictive.

Since on-call payments are not allocable to any specific hours of work, but are paid as compensation for performing a duty involved in an employee's job, the payments must be included in his or her regular rate of pay for purposes of computing overtime pay under the Act (see section 778.223 of 29 CFR Part 778).

We trust that the above is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us again.

Sincerely,

Herbert J. Cohen  
Deputy Administrator