FLSA 1220

June 23, 1986

This is in reply to your letter of May 2, enclosing a copy of correspondence you received from *** concerning the application of the Fair Labor Standards Act (FLSA) to her employment with the State *** Department of Revenue. *** is concerned with not being permitted by her employer to remain at her desk to eat lunch, and to work after her normal hours for her employer as a volunteer.

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 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. The provisions of FLSA apply to all employees of State and local governments except for those who are specifically excluded in section 3(e)(2)(c) of FLSA and those who may qualify for exemption from the minimum wage and/or overtime pay provisions of FLSA.

The monetary provisions of FLSA apply to employees of State and local governments as a result of the decision by the U.S. Supreme Court in Garcia v. San Antonio Metropolitan Transit Authority et al. (Garcia), 105 S.Ct. 1005 (February 19, 1985) . In deciding Garcia, the Supreme Court expressly overruled its decision in National League of Cities v. Usery, 426 U.S. 833 (1976), that the minimum wage and overtime pay provisions of FLSA could not constitutionally be applied to employees of State and local governments who are engaged in traditional government functions.

On November 13, 1985, the Fair Labor Standards Amendments of 1985 (the Amendments), Public Law 99-150, were signed into law. On April 18, the Department of Labor (the Department) published proposed regulations which would implement this legislation. These proposed regulations contain rules concerning certain statutory exclusions and exemptions, recordkeeping requirements and compensatory time provisions, which apply to State and local government workers in general, in addition to specific rules for volunteers and for fire protection and law enforcement employees. A copy of Public Law 99-150, a copy of the proposed regulations, and a summary of the Department's investigation policy with respect to the Amendments are enclosed for your information.

With regard to your constituent's question concerning meal periods, it is our position that bona fide meal periods are not worktime. However, the employee must be completely relieved from duty for the purpose of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. The employee is not relieved from duty if he or she is required to perform any duties, whether active or inactive while eating. For example, an office employee who is required by his or her employer to eat at his or her desk is working while eating. However, an employee who chooses to remain at his or her desk during the meal period is not working if he or she is not required by the employer to remain at the desk and the employee is completely relieved of all duties.

Your constituent also wishes to "volunteer" her time after her normal working hours to keep her work "up-to-date" so that she will not get behind. She proposes to do this without requesting any additional compensation. Section 4(a) of the Amendments makes it clear that employees may not volunteer hours of service to their public employer where such services are the same type of services which the individual is employed to perform for such public agency. We are enclosing excerpts for the House and Senate Reports, which accompanied the Amendments, that make clear the congressional intent in this regard. It would require congressional action to permit employees to volunteer hours of service as your constituent proposes. These principles are also applicable in the private sector and have been upheld by the courts.

We hope that this satisfactorily responds to your constituent's inquiry.

Sincerely,

Paula V. Smith
Administrator