

**FLSA-425**

July 20, 1993

This is in response to your letter in which you request an opinion as to whether the "on-call" pay policy of your client is in compliance with the provisions of the Fair Labor Standards Act (FLSA).

The Wage and Hour Division of the Department of Labor administers and enforces the FLSA, the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid a minimum wage of \$4.25 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.

You state that your client requires selected employees to be on call after their work hours for the repair of certain equipment, for general maintenance and for security purposes. The on-call employees are not required to remain on the company's premises but are only obligated to be on-call and available as required. Generally, the employees are free to enjoy their off duty "on-call" time as they wish subject to only limited restrictions.

The nonexempt employees who are on-call after regularly scheduled hours will be compensated at time and one-half for each hour over 40 they work in a workweek, with a minimum of four hours paid for each week they are required to be on call. This minimum payment of four hours will be paid whether or not they received a call and, if the call takes more than four hours, the employee will be paid at the appropriate hourly rate for the actual hours worked. Travel to and from the site requiring service will be counted as time worked. Mileage and personal expense for long distance telephone calls will also be reimbursed.

You also state that the on call employees will be subject to the following conditions:

1. must be physically and mentally able to perform assigned duties when called;
2. must always be reachable by beeper; and
3. must be able to arrive at the designated workplace as soon as possible after responding to the beeper call.

As stated in section 785.17 of Interpretative Bulletin, 29 CFR Part 785, employees who are not required to remain on the employer's premises and are free to engage in their own pursuits, subject only to the understanding that they leave word at their home or with the employer where they may be reached, are not working while on call. When an on-call employee goes out on a job assignment, only the time actually spent making the call need be counted as compensable hours worked. However, if the on-call conditions are so restrictive that the employee is not really free to use the intervening period effectively for his or her own benefit, the on-call waiting time would be counted as compensable hours worked.

Based on the information contained in your letter, it would appear that the "on-call" time is not compensable hours of work under the FLSA.

We trust that the above information is responsive to your inquiry.

Sincerely,

Maria Echaveste  
Administrator