

FLSA 1272

June 1, 1994

This is in response to your letter requesting an opinion regarding certain issues pertaining to meal credits pursuant to section 3(m) of the Fair Labor Standards Act (Act) for food service employees.

You represent a company that is engaged in food service/ concessions at various national parks on a seasonal basis, and because worksites are remote, many hourly employees travel long distances to work for the company during the peak operating period of May through August.

The employees live in company-owned dormitories (for a daily deduction of \$8.25) and eat in the company's cafeteria. The meal credit deduction covers breakfast (\$1.70), lunch (\$2.10), and supper (\$2.70) for a total of \$6.50 per day. These employees may choose from any item on the cafeteria menu and may eat as much or as little food as they like. Beverages are included with each meal at no extra charge. Meal credits do not include a profit for the company. The company takes the full credit each day of employment whether the employee eats all or any of the meals covered by the credit. In addition, the employees may not opt out of the program during the period of employment. The weekly board and lodging deduction occasionally takes some employees' weekly wage below the statutory minimum wage.

You state that the company instituted and maintains its meal deduction policy based upon the following provision of the Wage and Hour Division's Field Operations Handbook:

Regulations 531.30 provides that an employee's acceptance of facilities must be "voluntary and uncoerced." The "voluntary and uncoerced" provision has been rejected in several court of appeals and district court decisions regarding meals provided to employees. WH no longer enforces the "voluntary" provision with respect to meals.

Therefore, where an employee is required to accept a meal provided by the employer as a condition of employment, WH will take no enforcement action, provided that the employer takes credit for no more than the actual cost incurred.

Based upon the information provided, your questions are answered as follows:

Q-1. May an employer take a meal credit where each subject employee is required to accept a meal from the employer as a condition of employment and where the employer takes credit for no more than the actual cost incurred in providing the meal?

A.1. Yes. The Wage and Hour Division will take no enforcement action provided that the employer takes credit for no more than the actual cost incurred. Please note that an employer may not take a credit where no cost is incurred. For example, when a meal is

made available to an employee, but is not consumed, and subsequently is retained in the employer's inventory for service to customers, no credit may be taken.

Q.2. Assuming all other conditions are met for a meal credit, may the employer's weekly deduction for meals and lodging take an employee below the cash minimum wage prescribed in the Act during nonovertime and/or during overtime weeks?

A-2. Yes. Section 3(m) of the Act permits an employer to count toward its minimum wage obligation, the "reasonable cost" of furnishing board, lodging, or other facilities which are "customarily furnished" to the employee. Furthermore, this "reasonable cost" to the employer must be included in the employee's regular rate of pay for the purpose of computing overtime pay.

Q-3. What records should an employer keep regarding meal credits so as to ensure compliance with section 3(m) of the Act?

A-3. Any employer who furnishes meals, lodging, or other facilities to employees as wages must maintain the records required in section 516.27 of 29 CFR Part 516 (copy enclosed). Bills, purchase orders, and cash register tapes may be appropriate for such purpose.

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

Sincerely,

Maria Echaveste
Administrator