FLSA-843

November 7, 1994

This is in response to your letter requesting an opinion concerning "rounding practices" as discussed under 29 CFR 785.48(b).

You state that the employees in question are drivers who are subject to the overtime requirements in Section 7(a) of the Fair Labor Standards Act (FLSA). The drivers' time starts at a fixed time in the morning, and at the end of the day they punch out and their time is adjusted to the nearest half hour.

You further state that for purposes of this opinion request, we are to assume that the time punched on the time card is an accurate representation of the time worked, i.e., that the time spent in walking from the last principal activity to the time clock is negligible. For example, from 1-14 minutes beyond the hour, the time is disregarded. If 15-44 minutes are punched, the employee receives one-half hour time. From 45 minutes to 1 hour, he/she receives credit for one hour's time. In other words, the employer rounds the quitting time to the nearest half-hour, i.e., 0-14 minutes goes back to the prior half-hour or hour, and 15-29 minutes goes forward to the next half-hour or hour.

As you know, the FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees must 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. Sections 785.47 and 785.48 of the Regulations indicate that there is no requirement in the FLSA for recording an employee's time "down to the minute." The employer may, of course, elect to do so. However, payment of wages based on recording and computing time to the nearest five minutes, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

It has been our policy to disregard insubstantial and insignificant periods of time outside the scheduled working hours. This policy applies only when a few minutes are involved and where the failure to count such time as hours worked is due to conditions justified by industrial realities. It should be noted, however, that where an employer arbitrarily fails to pay an employee for any part of the employee's fixed or regular working time, however small, this would be considered a violation of the FLSA.

Although section 785.48(b) refers to the more common practice of rounding to the nearest five minutes, or to the nearest one-tenth or a quarter of an hour, we do not believe we should question the practice of rounding to the nearest one-half hour providing such practice is more beneficial to the employee, and he/she is compensated for all the time worked. Based on the information provided, it is our opinion that a practice of rounding to the nearest one-half hour, as you stated, would not be inconsistent with the practices outlined in section 785.48(b) of Regulations, Part 785. Our acceptance of this rounding

practice rests on the assumption that the rounding averages out so that these drivers are fully compensated for all the time they actually work.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explore or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have also represented that this opinion is not sought on behalf of a client or firm which is under investigation by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with, the provisions of the FLSA.

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

Sincerely,

Maria Echaveste
Administrator