

FLSA-1317

January 26, 1996

This is in response to your letter requesting an opinion on the application of the Fair Labor Standards Act (FLSA) to employees receiving medical attention.

You state that your client, a hospital, makes medical care available to all employees. Employees are permitted to obtain medical care at any time for any health problems. Employees who come to work when they are ill will go to a clinic run by the hospital and will be paid for the time so spent. The hospital wants to eliminate this practice as it relates to nonwork illnesses or injuries.

The hospital would like to have an employee clock out when the employee states he or she has a nonwork related illness or injury. At that point the employee could either go home, go to any other medical facility in the area, or use one of the hospital's clinics. The hospital would not treat the time after the employee clocks out as hours worked under the FLSA.

As you point out, section 785.43 of Interpretative Bulletin, 29 CFR Part 785, concerning hours worked under the FLSA, states that time spent by an employee waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal work hours on days when he or she is working constitutes hours worked. However, it is our belief that this section of regulations refers only to work related illnesses and injuries. It is our opinion, therefore, that time spent by your client's employees in obtaining medical attention on your client's premises for nonwork related illnesses or injuries is not hours worked and not compensable under FLSA. In addition, since the FLSA does not require an employer to provide employees with sick or personal time off with pay, the terms and conditions for the use of such time off pay is a private matter for agreement between an employer and the employees in question or the employees' authorized representatives.

We trust that this satisfactorily responds to your inquiry.

Sincerely,

Maria Echaveste
Administrator