U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

WHD-OL-1996-0003

May 6, 1996

NAME*

This is in response to your letter concerning travel time under the Fair Labor Standards Act (FLSA). You are specifically concerned about certain travel time which is not "hours worked" under the FLSA and Regulations, 29 CFR Part 785, and is not considered to be "hours worked" by your client, but is time for which your client pays the employee's required straight-time hourly rate. This "travel time" is not combined with "work time" (a combination of time spent working on the job and travel time which is hours worked) to determine the employer's overtime pay obligations. You ask whether the employer's payment for the "travel time" hours which are not hours worked converts them, in effect, into hours worked under the FLSA and, as such, requires their inclusion in the employee's total hours worked in a workweek for purposes of computing overtime pay.

It is our opinion that your client's payment for the "travel time" in question does not convert the hours into hours worked under the FLSA and that the method of payment is in compliance with the Act. Our rationale is set forth below and is derived primarily from 29 CFR 778.320.

In some cases an agreement provided for compensation for hours spent in certain types of activities which would not be regarded as working time under the Act if no compensation were provided. The agreement of the parties to provide compensation for such hours may or may not convert them into hours worked depending on whether or not it appears from all the pertinent facts that the parties have agreed to treat such time as hours worked. Except for certain activity governed by the Portal-to-Portal Act (see §778.320 (b), the agreement of the parties will be respected, if reasonable.

In situations such as your client's, where time spent in activity which would not be hours worked under the Act if not compensated and would not become hours worked under the Portal-to-Portal Act even if made compensable by contract, custom, or practice, the parties may reasonably agree that the time will not be counted as hours worked. Where it appears from all the pertinent facts that the parties have agreed to exclude such activities from hours worked, payments for such time will be regarded as qualifying for exclusion from the regular rate under the provisions of section 7 (e) (2) of the FLSA, as explained in §§778.216 to 778.224. The payments for such hours cannot, of course, qualify as overtime premiums creditable toward overtime compensation under section 7 (h) of the Act. See §778.320 (b).

In addition to Part 778, we are also enclosing a copy of the Preamble to the revision of §778.320, published January 23, 1981, which contains the background for our current position.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that 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 that is under investigation by the Wage and Hour Division, or that 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.

Sincerely,

Maria Echaveste
Administrator

Enclosures

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).