

## **FLSA-1333**

December 3, 1996

This is in response to your request for an opinion under the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* ("FLSA"), as to the effect of a particular pay practice of your client. This practice results from a scheduling change for your client's approximately 100 employees.

The employees currently have a 30 minute uncompensated meal period, during which time they are completely relieved from duty as required by 29 C.F.R. 785.19. The employer wishes to know if paying the employees for the first 15 minutes of the meal period would have the effect of converting the remaining 15 minutes of the thirty minute meal period into a compensable break period pursuant to 29 C.F.R. 785.18. It is your client's intention not to suffer or permit any work during the thirty minute meal period, even though employees will be compensated for 15 minutes of it.

We note the provision at 29 C.F.R. 778.320(b) dealing with the payment for time not normally considered compensable worktime. It is stated therein:

On the other hand, in the case of 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. Activities of this type include eating meals between working hours.

Thus, if your client and its employees agree that payment for the first half of the lunch period does not make such time compensable hours of work, the employees will continue to have a 30 minute lunch period which is not counted towards their compensable hours of work. Such payment, however, may be excluded from their total compensation for purposes of calculation of their regular rate. However, the payment may not be credited toward overtime compensation due in any weeks in which they otherwise work in excess of 40 hours. See 29 C.F.R. 778.320(b); 778.216; and 778.224.

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 which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a different conclusion than the one expressed herein. This opinion is also provided on the basis that it 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.

I trust that the above is responsive to your inquiry.

Sincerely,

Maria Echaveste  
Administrator