

FLSA-1413

August 15, 1973

This is in response to your letter of July 26, 1973, concerning the application of the overtime provisions of the Fair Labor Standards Act to hospital employees.

A hospital has the option of complying with either of two overtime pay standards prescribed in the Act. Under section 7(a), which requires overtime pay after only 40 hours in a workweek, there is no daily overtime pay requirement. Thus, for employees who work a ten hour day, four day workweek schedule, no daily overtime would be required if they are compensated under section 7(a). However, section 7(a) does not permit averaging of hours over two or more weeks. Thus, if an employee works thirty hours in one week and is paid for forty hours, and works fifty hours in the next week, he must receive overtime compensation for the overtime hours in the second week, even though the average number of hours worked in the two weeks is forty.

Under the special provisions for hospitals, prescribed in section 7(j), overtime pay is required for hours worked in excess of eight per day or eighty in the 14-day work period, whichever is greater. However, a hospital may not commingle the provisions of sections 7(a) and 7(j) with respect to a particular employee as these sections are mutually exclusive.

If the hospital wishes to convert to a 4-day, 40-hour workweek and does not wish to pay daily overtime, the Act does not prohibit an employer from withdrawing from the section 7(j) method for any employee or group of employees if the change is intended to be permanent or for a substantial period of time, and is not designed to evade the overtime requirements of the Act.

For more detailed information about overtime pay as it applies to hospitals, you may wish to refer to the hospital pamphlet, beginning on page 6. We are also enclosing a recent study by the Bureau of Labor Statistics of new flexible work patterns such as the 4-day week.

In response to the other issue raised by you, there is no law administered by the Department of Labor which requires an employer to give his employees a rest period. As long as the employee is paid in compliance with the monetary provision of the law, such matters as rest periods and scheduling of working hours are left for negotiation between the employer and employee or his bargaining representative.

Sincerely,

Joseph P. McAuliffe, Chief
Division of Minimum Wage
and Hour Standards
Wage and Hour Division

Enclosures