

FLSA-259

July 7, 1975

This is in reply to your letter of May 7, 1975, requesting clarification of my letter to you of April 8, 1975, on whether time spent at the beginning of an employee's work shift for the purpose of receiving instructions from the employee being relieved on the preceding shift would constitute compensable hours of work under the Walsh-Healey Public Contracts Act (PCA).

The practice in question, which is termed "relieving", takes place while the factory machinery remains in operation and, according to a rule established by management to maintain control of the crews, takes place within the 15 minute period prior to the shift change time. The time spent by the employees in "relieving" is regarded by the employer as "helpful toward a good operation". No record is kept of the time spent in "relieving" or the pre-shift exchanges of information and, contrary to our prior understanding of this matter, no payment is made for the periods of time devoted to such exchanges between employees.

The subject of preparatory and concluding activities as compensable hours of work under the PCA are discussed in 29 CFR 785.24 through 785.26. In addition to the employee's principal activity, hours worked includes all activities which are an integral part of that activity including those closely related activities which are indispensable to its performance. Preparatory and concluding activities which are an integral part of the employee's workday are distinguished from preliminary and postliminary activities performed before and after the workday. Generally speaking, all activities performed during the employee's workday are counted as working time. "Workday" means the period between the time on any particular workday when an employee commences his principal activity and the time at which he ceases his principal activity or activities.

In applying these principles to the facts in question, I can only reiterate the conclusion reached in my letter of April 8th, that the time spent at the beginning of an employee's work shift in receiving instructions from the employee being relieved on the prior shift constitutes compensable hours of work since it is a principal activity which is an integral part of the employee's workday. The "relieving" requirement, which is mandated by a rule established by the employer to further the operation of the plant, is indispensable to the performance of the employee's duties.

You also state that the "relieving" time has been regarded through long past practice as "de minimis" and not compensable. While insubstantial or insignificant periods of a few seconds or minutes may be disregarded as "de minimis", where justified by industrial realities, an employer may not arbitrarily fail to count and pay for any part of an employee's fixed or regular working time or any other practically ascertainable time actually spent on duties which the employee is regularly required to perform. (See 29

CFR 785.47.)

The relieving activity, which is performed pursuant to work rules promulgated by the employer, is done during practically ascertainable periods of time, and constitutes a duty which the employee is regularly required to perform. Accordingly, under the above rule, the time spent in relieving cannot be regarded as de minimis. The amount of time spent in relieving, therefore should have been recorded as working time in accordance with the record-keeping requirement of the Act. The character of the relieving time as hours worked has not been properly recorded in the past.

This information should clarify this matter for your subscriber.

Sincerely,

William Hoffman, Director
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and Hour Standards
Wage and Hour Division