

FLSA-1402

December 21, 1978

This is in reply to your letter of October 17, 1978 addressed to the Office of Federal Contract Compliance requesting our opinion regarding the legality of certain provisions of an employment agreement, which you enclosed. You also ask how you may collect for unpaid overtime worked. While your letter does not contain sufficient information for us to give you a definitive reply, the following should be helpful to you.

We have considered your comments under the provisions of the Fair Labor Standards Act which is the Federal law of most general application concerning wages and hours of work. Its major provisions are highlighted in the enclosed Handy Reference Guide.

All covered and nonexempt employees must currently be paid a minimum wage of not less than \$2.65 an hour for all hours worked and overtime compensation at a rate of one and one-half times their regular rate of pay for hours worked in excess of 40 in a workweek, notwithstanding any private agreement to the contrary.

The language of the Act and the controlling court decisions make it clear that an employee cannot waive his or her statutory right to be paid in accordance with the minimum wage and overtime pay provisions of the Act.

In Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, the Supreme Court of the United States said that the policy consideration of Congress in enacting the Fair Labor Standards Act "forbids waiver of basic minimum wage and overtime wages under the Act".

However, section 13(a)(1) of the Act provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity provided certain tests relating to duties, responsibilities, and salary as discussed in the enclosed WH publication 1281 are set.

If you feel you are not such an exempt employee and wish to file a complaint (which will be kept confidential) for the nonpayment of overtime hours worked. We suggest you contact our Area Office at 1150 Southwest First Street, Room 202, Miami, Florida 33130, telephone (305) 350-5767. The staff in that office is in the best position to ascertain the necessary facts and will be pleased to offer every possible assistance.

For information regarding workers compensation you should contact the State of Florida Department of Labor and Employment Security, 1321 Executive Center Drive, East, Room 105, Ashley Building, Tallahassee, Florida 32301, telephone (904) 486-2713.

The other matters you underlined in the employment agreement are not governed by any law we administer.

Sincerely,

William G. Blackburn
Chief, Branch of Wage and Hour
Standards

Enclosures