

FLSA-220

September 19, 1979

This is in reply to your letter of August 13, 1979, requesting an opinion as to whether or not your employer's method of counting hours worked is proper under the Fair Labor Standards Act.

The Fair Labor Standards Act is the Federal law of most general application concerning wages and hour of work. The major highlights of this law are contained in the enclosed "Handy Reference Guide."

This law requires that all covered and non-exempt employees be paid at least a minimum wage of \$2.90 an hour for all hours worked and overtime pay of one and one-half time the regular rate of pay for all hours worked over 40 in the workweek. Any amount paid higher than these standards is a matter for agreement between the employer and the employees or their authorized representatives. In general, hours worked includes all the time an employee is required to be on duty or on the employer's premises or at a prescribed workplace, and all time when the employee is suffered or permitted to work for the employer. Work which the employer does not request but permits is work time. This basic rule also applies to work performed away from the employer's premises. Therefore, an employer must count hours that a covered and non-exempt employee works even if they have not been properly authorized in advance.

Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. As an enforcement policy the Wage and Hour Division will not consider as working time that time spent in travel away from home outside of regular working hours as a passenger on public or private transportation. Also, time spent waiting for a flight may or may not be compensable, depending upon whether the waiting time is during normal duty time or outside of normal duty time.

Finally, an employee who performs work for a customer of the employer is not required to collect from the customer for the job before the employee can be paid for the work performed. Also, it has been the longstanding position of the Department that when an employer requires a uniform to be worn at work, the cost of the uniform, its maintenance or replacement may not cut into the minimum wage and overtime pay required by the Act.

If you have any further questions, you may wish to contact our Wage and Hour Area office at 540 New Federal Building, 1220 Southwest 3rd Avenue, Portland, Oregon 97204 (telephone: (503) 221-3057). The staff of that office will be pleased to offer every possible assistance.

Sincerely,

Brooks N. Sipes, Acting Director
Division of Minimum Wage and
Hour Standards

Enclosure