

FLSA-1381

May 27, 1980

Thank you for your letter regarding the method by which you are paid as a resident manager of an apartment complex. You do not believe you and your wife were paid in compliance with the requirements of the Fair Labor Standards Act.

You state that during your employment you were required to reside in a townhouse furnished by the employer for the benefit and convenience of the employer and thus the rent could not be claimed by the employer as wages paid. Further, as not all resident managers were required to reside on the employer's premises, the facilities were not customarily furnished employees. You also ask if time spent on call is compensable hours of work. Finally, you were considered that the hours concurrently worked by you and your wife were not properly compensated.

As stated in section 531.29 of 29 CFR Part 531, copy enclosed, the use of the word "furnishing" and the legislative history of section 3(m) of the Act clearly indicate that this section 3(m) was intended to apply to all facilities furnished by the employer as compensation to the employees, regardless of whether the employer calculates charges for such as additions to or deductions from wages. Section 531.31 of Part 531 explains where such facilities are "furnished" to the employee, it will be considered a sufficient satisfaction of this requirement if the facilities are furnished regularly by the employer to his or her employees, or if the same or similar facilities are customarily furnished by other employers engaged in the same or similar trade, business, or occupation in the same or similar communities.

Therefore, since lodging is customarily furnished resident managers of apartment complexes, a wage credit equal to the reasonable cost or fair value of such lodging may be claimed by the employer. Also, as explained in section 531.32(a) of Part 531 utilities furnished to employees have been determined to be facilities for which an employer may claim a wage credit. It is the position of the Department of Labor that the reasonable cost to the employer of furnishing an employee with board, lodging, or other facilities, must be included in computing the employee's regular rate of pay, however advantageous it may be to the employer to provide such facilities provided the employee actually receives the benefits of the facilities.

In Master v. Maryland Management Co., 493 F. 2d 1329, which you cite, the apartment was not furnished by the employer since Mr. *** paid rent for it. Thus, the apartment was not a facility furnished by the employer to the employee and no wage credit could be claimed by the manager.

Whether time spent on call is compensable hours of work or not is a question of fact. As a general rule, where an employee is not required to remain on the employer's premises but who is merely required to remain at home or leave word with company officials where he or she may be reached is not working while on call. However, if the on-call employee is called out for an assignment, the time devoted to the call is hours worked and must be counted and paid for as such. Further, if calls are so frequent that the employee is not really free to use the intervening periods effectively for the employee's own benefit, the on-call waiting time would be counted as hours worked.

Generally speaking, all activities performed during the employees' workday, which includes all the time employees are required to be on duty or on the employer's premises or at a prescribed workplace, and all time during which the employees are suffered or permitted to work for the employer are counted as working time.

However, there is not enough information in your letter to permit us to determine if we may be of assistance, therefore, we suggest that you contact our Area Office located at U.S. Custom House, Room 228, 721 19th Street, Denver, Colorado 30202, telephone: (303) 837-4405. The staff of that office is in the best position to obtain the necessary information and will be pleased to assist you in any way possible.

Sincerely,

Henry T. White, Jr.
Deputy Administrator

Enclosure