

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210



MAY 29 1980

Dear

Thank you for your letter in which you indicate your concern about the inclusion of the reasonable cost or fair value of a meal in the regular rate of pay when computing overtime pay under the Fair Labor Standards Act.

You state the staff of many residential programs are required to eat with residents. This is to provide continuity in the program and to serve as a role model at mealtime as well as to offer general supervision and guidance in appropriate eating behavior. It is your opinion that such meals are actually consumed at the instruction of (and therefore, the benefit of) the employer and the cost value need not be considered part of an employee's compensation.

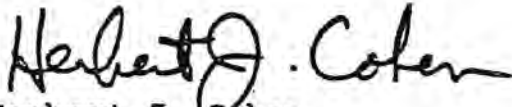
Under the above circumstances, we assume that time spent in eating such meals is counted as compensable hours of work. As explained in section 531.3 (d)(1) of 29 CFR Part 531, copy enclosed, the cost of furnishing "facilities" found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages. Section 531.32(c) states that meals are always regarded as primarily for the benefit and convenience of the employee. However, in the unusual situation you present where an employee is providing general supervision, guidance and serving as a role model to his or her wards as an integral part of the employment, and is required to eat the meal, it is our opinion that under such circumstances, the meals are primarily for the convenience of the employer.

Accordingly, since such meals are not remuneration for employment, the "regular rate" of pay is not increased by the reasonable cost of the meals furnished to the employees.

A thorough review of the wage and hour guidelines which you prepared and submitted for review, indicates they are technically correct. However, you may wish to cross reference some of the points presented to prevent any misunderstanding by your clientele. For example, point 3 might be cross referenced to point 16 and point 10 might be cross referenced to points 11 and 12.

In addition, you may wish to add the following after the first sentence of point 9. Employees who reside on the employer's premises five days a week may be considered as residing on the employer's premises for extended periods of time. Where less than 120 hours are spent residing on the employer's premises five consecutive days or nights would also qualify as residing on the premises for extended periods of time.

Sincerely,



Herbert J. Cohen
Assistant Administrator

Enclosure