

FLSA-1127

February 27, 1981

Thank you for your letter inquiring whether your client's proposed computerized record-keeping system would be in compliance with the recordkeeping provisions of the Fair Labor Standards Act (FLSA).

You state that your client, *** Corporation, proposes to transcribe the data from all payroll time sheets into a computer. The data include the employee's identification number, the employee's initials and the number of hours worked in the workweek. A printout or "machine facsimile" is made from the data and would be the only record of information on working hours retained by the company. The original time sheets would be destroyed after six months.

Upon the closing of the monthly accounting cycle, the printout is then indexed and stored on permanent microfiche. You state there are adequate safeguards against fire, unauthorized alteration and destruction caused by machine malfunctions from the point of data entry into the computer until the machine facsimile is transferred into microfiche. The original microfiche is filed in a vault with copies only available for inspection and review.

You wish to know whether this computerized system would be in compliance with 29 CFR Part 516.6 (copy enclosed), which requires that basic employment and earnings records be preserved for not less than two years.

We have carefully reviewed the information submitted and wish to point out some of our concerns. It appears that the employees involved work a fixed schedule of hours (8:00 - 4:30). There is no apparent way, however, of identifying the days of employment and any deviations in starting and stopping times in accordance with 29 CFR Part 516.2(c). Also, in the event that your client employs minors, who are subject to the child labor provisions of the FLSA (which limit the daily and weekly hours that may be worked), a daily record of hours worked should be maintained in accordance with 29 CFR Part 516.2(a)(7).

Based on the information submitted, it is our opinion that the machine facsimiles stored on microfiche are records for the purposes of the FLSA. Therefore, this computerized system would be in compliance with the record-keeping requirements of the FLSA, provided that changes are made in the records to conform with 29 CFR Part 516.2(c) and that such records are maintained for at least two years.

It should also be pointed out that while the records in question contain information relating to the number of hours worked, your client is also responsible for maintaining all other data required by 29 CFR Part 516.2 and any other relevant parts of such regulation.

On the gang sheet, we noted categories entitled compensatory time. In this regard, we wish to point out that, generally, compensatory time-off in lieu of the payment of overtime is not permitted under the FLSA. The enclosed handout contains a discussion on the "time-off plan," which is the only pay plan which allows employees to utilize compensatory time-off in compliance with the FLSA.

We trust the above is responsive to your inquiry.

Sincerely,

Henry T. White, Jr.
Deputy Administrator