

FLSA-701

July 14, 1981

This is in reply to your letter of June 25, 1981, with enclosures, concerning the recent power failure at your place of employment which resulted in a loss of working time. It is your contention that you should be compensated for that time since you were unable to use the "down time" effectively for your own purposes.

We have considered your inquiry under the Fair Labor Standards Act (FLSA), which is the Federal law of most general application concerning wages and hours of work. The principles for determining whether waiting time is compensable under the Act are discussed in Sections 785.14 through 785.17 of the enclosed Interpretative Bulletin, Part 785.

If an employee is waiting for repairs to be made so that he/she can resume work and is unable to use the waiting time effectively for his/her own purposes, such time is considered compensable hours of work. In this light, the requirement that an employee paid on a piece-rate basis receive not less than the minimum wage for each hour of work is based on weekly pay earned, not daily or hourly pay earned. Of course, upon completion of the pay period, a covered and nonexempt employee must receive at least \$3.35 for each hour of work and overtime compensation (at one and one-half times the regular rate of pay) for hours worked in excess of 40 in a workweek.

If your total earnings in the week in question divided by your total hours worked (including the "down time") equaled at least \$3.35 an hour, you were properly paid insofar as the FLSA is concerned. We have no authority to enforce a rate of pay higher than \$3.35 an hour in non-overtime weeks, nor does the law contain any provision requiring that an individual paid on a piece-rate basis be compensated for the "down time" as such.

While we understand your concern in this situation, we regret that we are unable to be of assistance.

Sincerely,

Brooks N. Sipes, Chief
Branch of Wage and Hour Standards

Enclosure