



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FLSA2009-16

January 16, 2009

Dear **Name***:

This is in response to your request for an opinion regarding whether the use of a nine-day, compressed workweek schedule is in compliance with the Fair Labor Standards Act (FLSA).¹ It is our opinion that the policies and procedures described comply with the FLSA.

Your client company has a two-week pay period that allows employees to work nine days during the pay period. Under this arrangement, employees work nine hours per day Monday through Thursday and work eight hours on one of the two Fridays during the two-week period. The company is proposing changes to the corporate policy and to the time-keeping system to ensure compliance with the FLSA. The new policy will require employees to choose their desired workweek schedule from a list of employer-established, standard workweek schedules. The employees may choose a schedule that begins at 11:31 a.m. Friday and ends at 11:30 a.m. the following Friday, with the scheduled workday starting at 7:30 a.m. Alternately, the employee may choose a schedule that starts at 12:31 p.m. Friday and ends at 12:30 p.m. the following Friday. The workday starts at 8:30 a.m. Once approved, the selected workweek will appear on the employee's time card. Time cards will have two separate columns for reporting time on Friday – one column for hours worked during the first workweek and another column for hours worked during the second workweek. Employees will continue to be paid time and one half for all hours worked over forty in any workweek. You ask if this proposed new arrangement would comply with the workweek requirements of the FLSA.

The FLSA sets a single workweek as the standard length of time used to determine if an employee is due overtime. It does not allow for the averaging of hours over two or more weeks. Each workweek stands alone. *See* 29 U.S.C. § 207(a)(1); [29 C.F.R. § 778.104](#). Workweeks need not coincide with calendar weeks. “An employee’s workweek is a fixed and regularly recurring period of 168 hours - seven consecutive 24-hour periods. It . . . may begin on any day and at any hour of the day.” [29 C.F.R. § 778.105](#). Likewise, a standard workweek need not be implemented for all employees. It “may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees.” *Id.* The workweek cannot, however, fluctuate depending on the schedule of hours worked by the employee.

Once the beginning time of an employee’s workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive materials cited in this letter can be found at www.wagehour.dol.gov.

workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act.

Id.

The workweek you describe complies with the FLSA. The workweeks are fixed, consist of 168-hour periods, and employees will be paid for any hours they work over forty in that specified period.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino
Acting Administrator

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**