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U. S. DEPARTMENT OF LABOR
Wage and Hour Division
Washington

HOURS WORKED -- WHAT THEY ARE

An interpretative bulletin, to guide employers and employees in determining what are hours worked under the Fair Labor Standards Act, was made public today by Administrator Elmer F. Andrews of Wage and Hour Division, U. S. Department of Labor.

This latest bulletin, thirteenth in the series of interpretative bulletins prepared in the office of the General Counsel, gives an indication of the course the Administrator will follow in determining employees' hours of work for purposes of administering the Act.

Some idea of the extent and nature of specific problems that have been presented to the Wage and Hour Division with respect to the determination of hours worked, is gained from the sub-headings under which the different problems are grouped in the bulletin. These include time clocks, waiting time and employees subject to call, travel time, meetings and lectures, and employees having more than one job.

"The Act contains no express guide as to the manner of computing hours of work, and reasonable rules must be adopted for purposes of enforcement of the wage and hour standards," the bulletin states, preliminary to taking up detailed discussion of specific problems.

"As a general rule," it continues, "hours worked will include (1) all the time during which an employee is required to be on duty or to be on the employer's premises, or to be at a prescribed workplace, and (2) all time during which an employee is suffered or permitted to work, whether or not he is required to do so."

"In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from beginning of the workday to the end, with the exception of periods when the employee is relieved of all duties for the purpose of eating meals."

Taking up the specific problems not sufficiently covered by this general formula, the bulletin declares that time clocks, if used, would be an appropriate basis for determing hours worked only when they accurately reflect the period worked by the employee. If the employer requires an employee to be present for a considerable period before punching a time clock, such time should be considered hours worked, the bulletin holds.

On the subject of "waiting time and employees subject to call," the bulletin is explicit and detailed.

"Many inquiries have been received," it states, "with respect to periods of inactivity due to the breakdown of machinery and time spent in waiting for materials to be furnished, or waiting for the loading or unloading of railroad cars or other vehicles of transportation.

"Generally the time during which an employee is inactive by reason of interruptions in his work beyond his control should be included in computing hours worked if the imminence of the resumption of work requires the employee's presence at the place of employment, or if the interval is too brief to be utilized effectively in the employee's own interest. This result would not be affected by the fact that the employer tells his employees that they are free to leave the premises.

"Hours worked are not limited to the time spent in active labor, but include time given by the employee to the employer, even though part of the time may be spent in idleness."

The bulletin points out that messenger boys and chauffeurs, for example, engage in active work only intermittently on occasions, but their time is not their own while waiting or remaining conveniently available to carry out their employer's instructions, when issued. Accordingly, waiting time of such employees should be considered hours worked.

In a few occupations, periods of inactivity need not be considered as hours worked, even though the employee is subject to call, it is stated. The answer will depend upon the degree to which the employee is free to engage in personal activities during periods of idleness, when he is subject to call, and the number of consecutive hours that the employee is subject to call without being required to perform active work--i.e., the frequency with which the employee is called upon to engage in work. In these cases the nature of the employee's work involves long periods of inactivity which the employee may use for uninterrupted sleep, to conduct personal business affairs, to carry on a normal routine of living, etc.

An example cited is the employee of a small telephone exchange operating a switchboard in the employee's own house. During the night no one is in direct attendance at the switchboard and an alarm bell awakens the operator if a subscriber wishes to make a call. If, over a period of several months, a telephone operator has been called upon to answer only a few calls between the hours of midnight and five in the morning, a segregation of such hours from hours worked will probably be justified, the bulletin holds.

Mention is made of such employees as pumpers of stripper wells in oil fields, and caretakers, custodians or watchmen of lumber camps, during the off season, all of whom live on the premises, have a regular routine of duty, but are subject to call at any time in the event of an emergency, during twenty-four hours of the day.

"The fact that the employee makes his home at his employer's place of business in these cases, does not mean that the employee is necessarily working twenty-four hours a day," the bulletin points out. "In the ordinary course of events, the employee has a normal night's sleep, has ample time in which to eat his meals and has a certain amount of time for relaxation and entirely private pursuits. In some cases, the employees may be free to come and go during certain periods. Thus, here again the facts may justify the conclusion that the employee is not working at all times during which he is subject to call in the event of an emergency, and a reasonable computation of working hours in this situation will be accepted by the Division."

If, however, the employee is required to remain on call after regular working hours in or about the place of business of his company, the time so spent must be considered as hours worked, but if he is merely required to leave word where he can be reached in the event of a call and he is not tied down to any particular place, such time need not ordinarily be considered hours worked.

On the question of travel time, it is stated that while no precise mathematical formula will provide the answer in every case, the question is often one of degree, and if the time spent by an employee in traveling is reasonably described as "all in a day's work" such time should be considered hours worked under the Act.

If a crew of workers is required to report at a designated place at a specified hour and is then driven to the place where they are to perform work, the time spent in riding to such place and in returning at the end of the day, should be considered hours worked.

In cases where the employer directs his employees to report for work at a specified hour at the place where the work is to be performed, the working time will be considered to begin at the time they report for

work, unless the traveling time required to reach the place is unreasonably disproportionate to the traveling time required in reporting for work at the employer's headquarters.

Where an employee is required to travel continuously for more than a full working day to reach a place to perform some assigned work, time spent traveling during regular working hours will be considered hours worked, but travel time outside of regular working hours need not ordinarily be so considered.

"As a general rule it may be stated" declares the bulletin, "that any employer should treat time spent by an employee during regular working hours in traveling pursuant to the employer's instructions as hours worked. If an employer requests his employees to do a job during regular working hours which requires the employee to leave the place of business, the traveling time of the employee should be included in hours worked, and this is true whether or not the particular job is within the employee's regular duties."

It is also stated that while no precise formula can decide such cases as that of employees who have to accompany shipments of cattle, poultry or machinery by ship or rail and are subject to call for twenty-four hours a day without having any active work to perform for long periods, any reasonable agreement entered into between the parties, or established by custom or usage, will be respected by the Wage and Hour Division in its enforcement policy.

Time spent in attending meetings and lectures sponsored by the employer will be considered time worked if such meetings are related to the employee's work or if attendance is not wholly voluntary on the part of the employee.

On the question of employees having more than one job, the bulletin cites as an illustration, two companies, A and B who arrange to employ a common watchman to watch the properties of both companies concurrently for a specified number of hours each night. In this case, it is ruled, Company A and Company B are not each required to pay the minimum rate of 25 cents an hour for all the hours worked by the watchman, but are considered as a joint employer for the purposes of the Wage and Hour Act.

"In some cases, however," the bulletin points out, "an employee may work 40 hours for Company A and 15 additional hours during the same week on a different job for Company B. In this case it would seem that if A and B are acting entirely independently of each other with respect to the employment of the particular employee, both A and B, in ascertaining their obligations under the Act, would be privileged to disregard all work performed by the employee for the other company.

"If, on the other hand, the employment by A is not completely disassociated from the employment by B, the entire employment of the employee for both A and B should be considered as a whole for the purposes of the statute. Whether the employment by A and B are completely disassociated depends, of course upon the facts in the particular case.

"This Division will scrutinize all cases involving more than one employment, and, at least in the following situations, an employer will be considered as acting in the interest of another employer in relation to an employee:

"If the employers make an arrangement for the interchange of employees; or

"If one company controls, is controlled by, or is under common control with, directly or indirectly, the other company."