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U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

Elmer F. Andrews, Administrator, Wage and Hour Division, U.S. Department of Labor, today released the following interpretative bulletin prepared in the Office of the General Counsel:

WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR
OFFICE OF THE GENERAL COUNSEL

INTERPRETATIVE BULLETIN NO. 13

DETERMINATION OF HOURS FOR WHICH EMPLOYEES ARE ENTITLED TO COMPENSATION UNDER THE FAIR LABOR STANDARDS ACT OF 1938

GENERAL

1. The accurate determination of what constitutes hours worked is essential in order to establish whether the minimum wage and maximum hours requirements of Sections 6 and 7 of the Act have been satisfied. This bulletin is intended to indicate the course which the Administrator will follow with respect to the determination of employees' hours of work in the performance of his administrative duties under the Act, unless he is directed otherwise by the authoritative rulings of the courts or unless he shall subsequently decide that his interpretation is incorrect. The manner of computing minimum wages and overtime compensation which is discussed in Interpretative Bulletin No. 4 is not within the scope of this bulletin.

2. 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. As a general rule, hours worked will include (1) all time during which an employee is required to be on duty or to be on the employ-

er'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 the 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.* The following specific problems with respect to the determination of hours worked which have been presented for our consideration are not sufficiently answered by this formula, however, and more detailed discussions of these problems are, therefore, set out in the following paragraphs.

TIME CLOCKS

3. Neither the statute nor Regulations, Part 516 (Requirements for Keeping Records) require that time clocks be used or specify the manner in which an employer has to keep a record of the number of hours worked by his employees. Time clocks where used will be an appropriate basis for recording hours worked only when they accurately reflect the period worked by the employee. Whether or not time clocks accurately reflect the period worked by the employee is to be determined by the formula in the preceding paragraph. It should be noted also that if the employer requires the employees to punch a time clock and the employee is required to be present for a considerable period of time before doing so, such time will be considered hours worked.

WAITING TIME AND EMPLOYEES SUBJECT TO CALL

4. Many inquiries have been received with respect to period 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

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*No opinion can be expressed at this time as to certain cases - e.g. employees engaged in mining or in working under high pressure - where by custom or agreement time spent eating meals is paid for as hours worked. (1030)

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 either if the imminence of the resumption of work requires the employee's presence at the time pf 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.

5. Many inquiries have likewise been received regarding employments, the very nature of which involves periods of inactivity for varying lengths of time. Ordinarily such periods of inactivity during which employees are on duty should be considered hours worked. Thus, for example, messenger boys who sit around in the office and wait for messages to be routed out should be considered as working not only when they are actually delivering messages but also while waiting for such messages to be assigned. Similarly, a chauffeur who is required to drive officials of a company engaged in the production of goods for commerce should be considered as working not only when he is actually driving such officials but also during the time he is obliged to hold himself in readiness to drive. In these cases the employee engages in active work intermittently, but his time is not his own while he remains conveniently available to carry out the instructions of his employer.

6. In a few occupations periods of inactivity need not be considered as hours worked even though the employee is subject to call. The answer will generally 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. A good example of this is the employee of a small telephone exchange operating a switchboard located in the employee's 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 telephone call. The operator has her bed alongside the switchboard and is able to get several hours of uninterrupted sleep every night, as experience over a considerable period of time may often demonstrate. Thus, if, over a period of several months a telephone operator has been called upon to answer only a few calls between the hours of twelve and five in the morning, a segregation of such hours from hours worked will probably be justified.

7. In some cases employees are engaged in active work for part of the day but because of the nature of the job are also required to be on call for 24 hours a day. Thus, for example, a pumper of a stripper well often resides on the premises of his employer. The pumper engages in oiling the pump each day and doing any other necessary work around the well. In the event that the pump stops (at any time during the day or night) the pumper must start it up again. Similarly, caretakers, custodians or watchmen of lumber camps during the off season when the camp is closed, live on the premises of the employer, have a regular routine of duty but are subject to call at any time in the event of an emergency. 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 24 hours a day. 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 employee 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.

8. In some cases employees may be subject to call after the com-

pletion of their regular working day; employees may be called upon after regular working hours to furnish emergency service to customers. If the employee is required to remain on call in or about the place of business of the company, the time spent should be considered hours worked. If, on the other hand, the employee is merely required to leave word where he can be reached in the event of a call and is not tied down to any particular place, such time need not ordinarily be considered hours worked. The employee, however, should be considered as working at any time during which he is actually making a call and his hours worked would include all time traveling to and from such a call.

TRAVEL TIME

9. The problem of travel time, in relation to hours worked, arises in a great variety of situations and no precise mathamatical formula will provide the answer in every case. The question is often one of degree; if the time spent by an employee in traveling is reasonably to be described as "all in a day's work," such time should be considered hours worked under the Act.

10. As a general rule it may be stated that an 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 employee 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.

11. In many cases travel time outside of regular working hours is considered "part of the day's work" and, accordingly, should be treated as hours worked. Thus, an employee whose normal working day extends from 8:00 A.M. to 5:00 P.M. may be requested by his employer at 5:00 P.M. to make one more outside call which involves two hours of traveling time (to get to the place where the work is to be performed and report back to the office) and active labor of one hour. In such case the employer may not disregard the travel time in computing the number of

hours worked by the particular employee; the employee's working day would extend from 8:00 A.M. to 8:00 P M. In this case the employee engages in active labor for his employer after the close of his regular working day and prior to the commencement of his next regular working day and his activities between 5:00 P.M. and 8:00 P.M. are, under the circumstances, reasonably to be considered as a continuation or extention of his normal working day. The same results, of course, would be reached if the employer requested his employee to report for work two hours earlier in the morning in order to make the one extra call.

12. If a crew of workers is required to report for work at a designated place at a specified hour and all the employees are then driven to the place where they are to perform work, the time spent in riding to such place should be considered hours worked. Similarly, the time spent returning from the place at the close of the day's work should be considered hours worked. In some cases, however, the employer requests his employees to report for work at a specified hour at the place where the work is to be performed instead of at the employer's place of business. In these cases the employee's working time may be considered to begin at the time he reports for work, unless the traveling time required in order to reach the place where the productive work is to be performed is unreasonably disproportionate to the normal traveling time required in reporting for work at the headquarters of the employer. No precise formula will solve this type of situation. What is unreasonably disproportionate depends upon the facts in the particular case and reasonable standards agreed upon between the employer and employee will be accepted for purposes of the Act.

13. In some cases an employee is required to travel continuously for more than a full working day during which time the employee is not engaged in actual productive work for his employer. For example, an employee whose regular working hours extend from 8:00 A.M. to 5:00 P.M may be required to spend two or three days and nights of continuous travel to reach a place where he is to perform assigned work. In such case, as indicated generally in paragraph 10, time spent traveling during the regular working hours should be considered hours worked. Trave

el time outside of regular working hours need not ordinarily be considered hours worked. If, however, the employee is required to travel on Saturdays, Sundays, and holidays, he should be considered as working on those days for the number of traveling hours between his established starting and stopping time on other days of the week. In determing whether the foregoing is applicable, factors such as the length of time required to reach the place where the assigned work is to be performed, whether the employee is given adequate time for sleeping and relaxation, the time that the employee is required to report for actual productive labor, etc. are very important.

14. Inquiries have been received with respect to employees who are required to travel continuously for several days and who perform active labor while traveling. Thus, for example, when cattle or poultry, etc.,are sent to market by rail, an employee of the shipper is required to travel on the train in order to water and feed the stock en route. In other cases an employer who ships machinery by train to a distant customer requires an employee to oil the machinery en route and otherwise to see that it arrives in perfect condition. The employee generally rides in the caboose with the train crew. In each of the foregoing cases, the employees are subject to call for 24 hours a day, but time required for active work by such employees would ordinarily be much less. The employee generally has a substantial amount of time for sleeping, eating, relaxation, etc.* No precise formula will decide this type of case and any reasonable agreement entered into between the parties or established by custom and usage which takes into account the amount of time required for active labor by the employee and the fact that the employee is subject to call for 24 hours a day, will be respected by this Division in its enforcement policy.

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* The question is obviously one of degree. No opinion is expressed in the case of the relief truck driver. As to the exemption provided by Section 13(b)(1) from the hours provision of the Act, see Interpretative Bulletin No. 9.

MEETING AND LECTURES

15. Time spent in attending meetings and lectures sponsored by the employer (whether or not attendance is voluntary) should be considered time worked if such meetings and lectures are related to the employee's work, as, for example, meetings and lectures for the purpose of teaching the employee the use of new types of machinery on his job, mine rescue, fire prevention and control. In addition, time spent in attending any meetings and lectures should be considered hours worked if attendance in not wholly voluntary.

EMPLOYEES HAVING MORE THAN ONE JOB

16. Many inquiries have been received with respect to employees who work for two or more companies. Thus, for example, Company A and Company B may arrange to employ a common watchman, the employee having the duty of watching the property of both companies concurrently for a specified number of hours each night. In this case A and B are not each required to pay the minimum rate required under the statute for all hours worked by the watchman (i.e. 25¢ an hour each) but A and B should be considered as a joint employer for purposes of the Act.

17. In some cases, however, 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 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 the common control with, directly or indirectly, the other company.