

1-25-95

This is in response to your letter on behalf of the
You specifically request an opinion regarding the
application of the Fair Labor Standards Act (FLSA) to an
alternative work schedule proposed by the

As you know, the Wage and Hour Division of the Department of
Labor administers and enforces the Fair Labor Standards Act
(FLSA). The FLSA is the Federal law of most general application
concerning wages and hours of work. This law requires that all
covered and non-exempt employees must be paid a minimum wage of
\$4.25 an hour and not less than one and one-half times their
regular rates of pay for all hours worked over 40 in a workweek.

Our responses to your questions are as follows:

- Q.1. With respect to non-exempt employees, is there any problem
with allowing employees to choose to work ten-hours per
day, 4 days per week (10/4)?
- A.1. No. The FLSA does not set a minimum or a maximum number of
hours in a day or in a week that an adult employee may be
required or may choose to work, nor does it regulate work
schedules or employers' utilization of their workforce.
- Q.2. With respect to exempt employees, is there any problem with
a 10/4 work schedule?
- A.2. Same as in A.1. above.
- Q.3. With respect to non-exempt employees, is there any problem
with allowing employees to choose an alternative work
schedule that calls for a two-week schedule as follows:
- nine hours per day for five days (week 1)
nine hours per day for three days (week 2)

eight hours per day for one day (week 2)
one day off (week 2)
for a total of 80 hours in two weeks?

A non-exempt employee must be paid overtime premium pay for all hours worked over 40 in a workweek.

A.3. An employee's workweek is a fixed and regularly recurring period of 168 hours - seven 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For this reason, it may be possible for an employer to establish a workweek that will accommodate a flexible work schedule such as that described above. Such a workweek would have to begin at a point somewhere during a workday so that no more than 40 hours are worked in each workweek.

Q.4. With respect to exempt employees, is there any problem with the 9/5/4 work schedule outlined in item 3 above?

A.4. No.

We trust that the above is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator