

DEC -5 1995

Dear

This is in response to your inquiry on behalf of
Your constituent is concerned about the
application of the Fair Labor Standards Act (FLSA) to his
employment as a school bus driver for the School
District.

The FLSA is the Federal law of most general application
concerning wages and hours of work. This law requires that all
covered and nonexempt employees be paid not less than the 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 the
workweek. The major provisions of the FLSA are briefly described
in the enclosed Handy Reference Guide.

apparently feels that the overtime requirements of the
FLSA discourage his employer from letting him work overtime
during the school year in order to earn "extra" compensation.
Consequently, he will have no funds to tide him over during the
summer months when he receives no compensation because school is
not in session.

It has been our experience that many school districts avoid
summer months without pay for their employees by prorating the
salary earned during the duty months and paying in equal monthly
installments throughout the entire year. This is done for the
convenience of the employees. For example, assume a school bus
driver is paid \$12,000 annually for 10 months (or \$1,200 per
month). For the employee's convenience, the employee is paid
\$1,000 per month for 12 months.¹

¹ The regular rate for overtime purposes (should any be
worked) would be determined by using the higher \$1,200 per month
rate:

$\$1,200.00/\text{mo.} \times 12 \text{ mo.} + 52 \text{ wks.} = \$276.92 \text{ (weekly equiv.)};$
 $276.92 + \text{hrs. worked} = \text{regular rate (rr)};$
 $\text{rr} \times \frac{1}{2} \times \text{overtime (OT) hrs.} = \text{additional OT premium due (\$)}.$

In addition, we should note that the FLSA, as the result of the 1985 Amendments, provides that public employees such as your constituent, can receive compensatory (comp) time off in lieu of immediate cash payment for FLSA overtime hours worked. Comp time is earned at the rate of one and one-half hours for each hour of FLSA overtime worked. Employees such as _____ can accrue up to 240 hours of comp time off with pay that can be used at some future date, such as during summer months when school is not in session. FLSA comp time is more fully explained in Regulations, 29 CFR 553 (copy enclosed). See §§553.20 - 553.28 (pp. 2033 - 2037).

In light of the above, _____ concerns could be addressed within the FLSA as presently amended. However, his employer would have to make appropriate changes in compensation practices.

With regard to litigation concerning the application of FLSA to public employees, major U.S. Supreme Court cases are discussed in the "background" section of the Final Rule of January 16, 1987, which implemented the Fair Labor Standards Amendments of 1985 (Pub. L. 99-150). See page 2012.

If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures

cc: Washington, D.C., Office

(\$276.92/wk. is the straight-time equivalent of \$1,200.00/mo.).