

FEB 12 1997

This is in response to your letter requesting an opinion as to whether your client's meal period policy would comply with section 785.19 of 29 CFR Part 785.

You state that the employees who are subject to the meal period policy are called store associates whose duties consist of sales, customer service, merchandising, security, administration, and general store maintenance. The store associates who work at least 5.5 hours are entitled to a 30 minute meal period that is unpaid, unless they are interrupted and not able to take the entire 30 minute break. These employees will be paid for the entire 30 minute meal period if they must return to the sales floor on two or more occasions. If they must return to the sales floor one time during the meal period, the meal period will be extended for the amount of time that they spend on the sales floor, so that the employees receive an entire 30 minutes of uninterrupted meal period time. You state that the store associates must spend their meal period in a store break room off the selling floor if only one store associate is on duty during the meal period. These employees may leave the store only if at least two other store associates remain in the store. The meal period of the employees who spend it in the break room is unpaid, unless they are interrupted and must return to the sales floor on two or more occasions.

As you are aware, section 785.19 of 29 CFR Part 785, states that bona fide meal periods that occur during the scheduled workday are not hours worked if the employee is completely relieved from duty for the purposes of eating regular meals. It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

On the other hand, section 785.17 of 29 CFR Part 785, states that an employee who is required to remain "on call" on the employer's premises or so close thereto that he cannot use

the time effectively for his own purposes is working while "on call." If, however, the employee is actually relieved of all duties for the meal period, except for rare and infrequent emergency calls, the meal period can be excluded from hours worked except when the period is actually interrupted. It should be noted that it is probable that employees eating lunch on the premises would always be subject to call in serious emergencies, but this alone would not make the meal period working time. However, if the meal period is frequently interrupted by calls to duty, the employee would not be considered relieved of all duties and the meal period would have to be counted as hours worked.

Based on the information contained in your letter, it is our opinion that the store associates who take a full 30 minute meal period without interruption would not have to be compensated for that meal period. However, the store associates who are required to remain "on call" in the company break room would have to be compensated for the meal period, unless their meal period is totally uninterrupted or is only interrupted for rare and infrequent emergency calls to duty.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit 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 request might require a different conclusion than the one expressed herein.

We trust that the above information is responsive to your inquiry.

Sincerely,

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