

SEP -8 1997

This responds to your letter of February 7, 1997, in reply to the Administrator's letter of January 21, 1997, concerning the legality of a proposed employment agreement under section 3(m) of the Fair Labor Standards Act (FLSA). Specifically, you ask whether an employer may credit \$.87 per hour against the minimum wage of \$4.75 as the reasonable cost of furnishing meals, beverages, and snacks to employees employed for extended periods at offshore or remote locations.

Section 3(m) of the FLSA permits an employer to consider as part of the wages paid an employee the reasonable cost or fair value of facilities furnished an employee. The furnishing of meals to employees is discussed in section 531.32 of 29 C.F.R.

In determining the reasonable cost of meals furnished to employees, we would generally include only the actual cost to the employer of the food and the cost of its preparation. We would not include any cost which the employer incurs whether or not the employees were furnished meals. In an establishment which sells meals to the public, items such as management salaries, employee insurance, payroll taxes, menus, holiday and vacation pay, operating supplies, laundry, telephone, maintenance services, advertising, licenses and taxes, insurance and depreciation, franchise cost, travel cost, cash over or short, building and equipment rental, promotion and general administrative costs are a part of the general cost of the operation of the employer's business establishment, may not be charged to the reasonable cost of the employees' meals.

Furthermore, in the typical restaurant the employees obtain their own meals from the kitchen and return their own empty plate, and food preparation employees might be paid at the same rate even if meals were not provided to employees. Only any extra costs that are directly attributable to the cost of providing employees' meals, rather than the entire labor cost associated with serving a meal to a customer, may be charged as a reasonable cost. Other numerous small cost items would be treated in accordance with the above principles.

You state in your letter that the employer's cost of furnishing meals to employees is \$10.43 per day or about \$.87 per hour for a 12-hour day. Assuming, with the above principles in mind, that \$10.43 is the actual daily cost of furnishing meals to each

employee, the employer may claim \$.87 per hour as a meal credit against the minimum wage.

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 which 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.

I trust that this satisfactorily responds to your inquiry.

Sincerely,

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