



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FLSA2009-17

January 16, 2009

Dear **Name***:

This is in response to your letter requesting an opinion regarding hours worked under the Fair Labor Standards Act (FLSA)* for on-call employees.

Your client, a Special Services District (District), is a nongovernmental water company that maintains the following guidelines for on-call employees:

- Employees are on-call after normal working hours. On-call hours are assigned on a rotating basis for a one-week period. Employees are on-call approximately every eight weeks, and they may switch schedules with other employees.
- The District provides the on-call employee a mobile telephone and a vehicle with necessary tools, should they need to respond to an emergency.
- Employees are not restricted to any location while on-call, but are expected to respond within 45 to 60 minutes of receiving an emergency call.

The travel time to an emergency location is approximately 5 to 20 minutes. You state that emergency calls occur two to five times per month and, on nights on-call employees receive calls, they typically do not receive more than one call. The average work time after arriving at the emergency location is five to ten minutes.

We address each of your questions separately:

Q1. Is the District responsible for paying an employee for being on-call even if not called to an emergency?

A1. Whether on-call time constitutes hours worked depends upon the employee's ability to use the on-call time for his or her own purposes. Under [29 C.F.R. § 785.17](#),

[a]n 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." An employee who is not required to

* Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call.

From the facts presented, the District does not need to compensate employees while on call. Employees are on call for a one-week period approximately every eight weeks, and may switch schedules with other employees. Emergency calls occur two to five times per month; on nights employees receive an emergency call, they typically do not receive more than one call. On-call employees are expected to respond to emergency calls within 45 to 60 minutes, and the travel time to emergency locations is approximately 5 to 20 minutes. Thus, the District's on-call requirements are not so restrictive as to constitute hours worked. *See Wage and Hour Opinion Letters August 12, 1997 and November 19, 1985 (copies enclosed).*

Q2. Is the District responsible for compensating employees only for the actual time spent receiving and responding to an emergency call?

A2. As discussed in the response to your first question, whether employees must be compensated for the time they are on call is a question of fact that depends upon whether the conditions are so restrictive or the calls are so frequent that the employees cannot effectively use the time for personal purposes. From the facts presented, the District does not need to compensate employees while on call. However, the time spent on the actual job assignment after responding to a call must be counted as compensable hours worked. *See Wage and Hour Opinion Letter April 20, 1994 (copy enclosed).*

Q3. Is the District responsible for compensating the travel time of an on-call employee called to an emergency?

A3. Determining whether travel time constitutes hours worked depends upon the kind of travel involved. The principles of travel time are discussed generally in [29 C.F.R. §§ 785.33 - .41](#). “[I]f an employee who has gone home after completing his day’s work is subsequently called out at night to travel a substantial distance to perform an emergency job for one of his employer’s customers[,] all time spent on such travel is working time.” [29 C.F.R. § 785.36](#). Therefore, if the employee travels a substantial distance to an emergency site, the travel time would be compensable. As to the situations where the employee is called to a regular work site, including a regular client site, the Wage and Hour Division (WHD) takes no position whether such time is compensable and therefore, for enforcement purposes, treats such travel time as not compensable. [29 C.F.R. § 785.36](#); *see Field Operations Handbook § 31c06(b)*. *Cf. Jonites v. Exelon Corp.*, No. 05-C-4234, slip op., 2007 WL 2198380, at **6-7 (N.D.Ill. July 30, 2007) (holding that such travel time is not compensable based in part on WHD’s non-enforcement policy set forth in FOH § 31c06(b)), *aff’d*, 522 F.3d 721 (5th Cir. 2008).

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express 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 letter might require a conclusion different

from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino
Acting Administrator

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**