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

FLSA2007-1NA

May 14, 2007

Dear **Name*:**

This is in response to your letter requesting an opinion concerning the application of the Fair Labor Standards Act (FLSA) to your client's proposed practice for compensating employees for meal periods. Your client is a long-term health care facility for elderly and disabled residents (the Employer).

Employees currently punch a time clock when they begin their lunch break and at the conclusion of the 30-minute lunch period. The Employer proposes a new practice in which the employees will no longer punch out and in at lunchtime because of numerous problems arising from this practice. The Employer proposes to automatically deduct a 30-minute lunch period from the employee's total daily time worked, unless the employee notifies the Employer that he or she did not take a 30-minute lunch period that day. The Employer will post this policy near the time clock, include it in the employee handbook, and review it at new hire orientation and during periodic in-service discussions.

In view of the above, you ask the following questions.

Q.1. Is this new practice acceptable for purposes of the FLSA?

A.1. The Fair Labor Standards Act regulations require that each employer keep and maintain an accurate record of all hours worked for each employee. *See* 29 C.F.R. § 516.2.[1] The regulations do not prescribe the method or means for recording hours worked so long as the records accurately reflect the number of hours worked each day and each week by each employee. *Id.* Time clocks are not required. *See* 29 C.F.R. § 785.48. Therefore, the employer's proposal to discontinue the use of a time clock to record the meal period does not violate the FLSA so long as the employer accurately records actual hours worked, including any work performed during the lunch period.

Q.2. If an employee takes a lunch period of less than 30 minutes, is the Employer obligated to pay for the full 30 minutes or only for that portion of the 30-minute time period the employee was not actually eating lunch?

A.2. Bona fide meal periods are not worktime. Ordinarily 30 minutes or more is long enough for a bona fide meal period. *See* 29 C.F.R. § 785.19. Meal periods of less than 30 minutes in which the employee is completely relieved from duty for the purpose of eating may be bona fide, and thus not considered hours worked, under special conditions. *See* Wage and Hour Opinion Letters FLSA2004-22 and September 25, 2000 (copy enclosed). Section 31b23 of the Wage and Hour Division's Field Operations Handbook (FOH) enumerates the factors

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

considered on a case-by-case basis in determining whether a meal period is bona fide including, for example, whether the employees have sufficient time to eat a regular meal, whether there are work-related interruptions to the meal period, and whether the employees have agreed to the shorter period. For purposes of answering your question, please note that the FOH provides that periods less than 20 minutes should be specially scrutinized by Wage and Hour Investigators to ensure that the time is sufficient to eat a regular meal under the circumstances presented.[2]

If the facts demonstrate that the period of time is a bona fide meal period, the employer is not required to compensate for time during which the employee is completely relieved for purposes of eating a meal. The employer must always, however, compensate employees for work time. If the employee commences work before the full 30-minute lunch period has ended, the employee must be compensated for this work time.

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 issue 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.

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

Sincerely,

Barbara R. Relerford
Office of Enforcement Policy
Fair Labor Standards Team

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

[2] Applicable state or local laws do not require lunch periods in excess of the period indicated.