



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

FLSA2008-5

May 30, 2008

Dear **Name***:

This is in response to your request for an opinion regarding whether the pay schedule of your client, a school district (district), complies with the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA).¹ It is our opinion that the pay schedule complies with the minimum wage and overtime provisions of the FLSA.

The district computes non-exempt employee salaries by multiplying the hourly rate by 40 and then multiplying the result by 52. For example, an employee paid \$13 per hour receives an annual salary of \$27,040 (\$13 per hour x 40 hours per week x 52 weeks per year). The employee receives a bi-weekly salary of \$1,040 (\$27,040 divided by 26 pay periods). The district uses a 26-pay-period cycle based on a negotiated agreement regarding exempt teachers. For administrative convenience, the district pays all employees, including non-exempt employees, based on that cycle. The district pays time and one half of the hourly rate for hours worked over 40 per workweek.

The district adjusts its pay date by one week an average of every four years to ensure only 26 pay periods each fiscal year. This adjustment results in one pay period containing three workweeks, instead of the typical two. In a discussion with my staff, you stated that the adjustment is noted on payroll records and paystubs at the start of each fiscal year in which there is a change. You state that employees expressed concern that they are paid “less” during this particular pay period. The district maintains that this practice does not violate the FLSA because employees still receive pay in excess of the minimum wage, their contractual hourly wages for all hours worked, and overtime pay. You ask whether this pay schedule complies with the FLSA.

The FLSA uses “a single workweek as its standard and does not permit averaging of hours over 2 or more weeks.” [29 C.F.R. § 778.104](#). Therefore, “[w]here the salary covers a period longer than a workweek, . . . it must be reduced to its workweek equivalent.” [29 C.F.R. § 778.113\(b\)](#). For example, the bi-weekly salary of \$1,040 results in \$520 of weekly pay. During the pay period containing three workweeks, the weekly pay amounts to \$346.67 per week (\$1,040 divided by three workweeks). The regular rate during the three workweek pay period is \$8.67 per hour (\$346.67 divided by 40 hours). During workweeks with no overtime, additional compensation is not due if the regular

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.

rate for the workweek yields at least the federal minimum wage under section 6(a) of the FLSA.² See *U.S. v. Klinghoffer Bros. Realty Corp.*, 285 F.2d 487 (2nd Cir. 1960). Therefore, the pay schedule during nonovertime workweeks complies with the FLSA because the corresponding regular rate of \$8.67 per hour exceeds the federal minimum wage. The pay schedule also complies with the FLSA overtime provisions because employees receive at least time and one half of their regular rate for hours worked over 40 in a workweek.

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).**

² Effective July 24, 2007, the Federal minimum wage increased from \$5.15 per hour to \$5.85 per hour. It will then increase to \$6.55 per hour on July 24, 2008 and to \$7.25 per hour on July 24, 2009.