



October 8, 2004

FLSA2004-21NA

Dear *Name\**,

This is in response to your request for an opinion on the application of the Fair Labor Standards Act (FLSA) to two health care providers. You are requesting an opinion as to whether or not these businesses operations are a single enterprise or joint employers for overtime purposes. You also ask if the single enterprise determination would be different if both companies were covered by the same pension plan.

At issue are two health care providers, one will be called HC-1, and the other HC-2. Both companies are individually incorporated, employ separate staffs and have separate Boards of Directors. HC-2 has recently opened a new location in close proximity to one of the HC-1 facilities. Several HC-1 employees, in an effort to earn extra money, have expressed an interest in also working for HC-2 at its new facility.

HC-1 and HC-2 are separately incorporated and have separate payrolls. The President/Chief Executive Officer of HC-1 also serves as the Executive Director of HC-2. More than one half of the members of HC-2's Board of Directors are also HC-1 Board members. HC-1 provides management services to HC-2, which include fiscal management, including accounting and billing, human resources, and operations management services. They do not share the same site or facilities except for a single room that HC-2 leases from HC-1 in one of its facilities.

Both companies keep separate records and file separate tax returns. Further, each company has its own bank account and maintains separate financial records. The companies use several of the same suppliers due to the fact the necessary items for the facilities are similar in nature, but the orders are placed separately using different federal identification numbers. Both companies use the same institution to provide health care coverage, but are covered under two separate group numbers. The same institution provides life insurance coverage to HC-1 and HC-2. HC-1 provides a pension plan for its employees but HC-2 does not provide a pension plan.

Section 3(r) of FLSA defines "enterprise" as the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments by one or more corporate or other organizational units. The criteria for evaluating whether a single enterprise exists are found in 29 CFR §779.200 – 779.229.

The indicia of common control over both business entities as the CEO of HC-1 is the Executive Director of HC-2, more than half of the Board members of HC-2 are also HC-1 Board members, and HC-1 provides management services which include fiscal management to HC-2. Therefore, it is our opinion that HC-1 and HC-2 constitute a single enterprise. If a common pension plan were provided for the establishments it would not change our opinion that they constitute a single enterprise.

All employees of a single enterprise must be paid in accordance with the FLSA's minimum wage and overtime pay provisions, unless specifically exempt. Joint employment does not apply to establishments which constitute a single enterprise. In order for joint employment to occur, an employee must be employed jointly by two or more different employers and the employment by one employer is not completely disassociated from employment by the other employers.

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. 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.

Sincerely,

Barbara R. Relford  
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).*