



January 7, 2005

FLSA2005-5

Dear *Name**,

This is in response to your request for an opinion on whether a draft timekeeping policy would be inconsistent with the requirement of the Fair Labor Standards Act (FLSA) that certain exempt employees must be paid on a salary basis.

You have enclosed a copy of the timekeeping rules which you say are intended "to assist the City in keeping track of the amount of time in an employee's leave bank, as well as determine whether any full day deductions are warranted" consistent with the provisions of the FLSA. Weekly time sheets are to be completed. The policy includes provisions which require exempt employees to notify their supervisors or directors when they plan to arrive after 9:00 a.m., and of the reason for full days of absence, such as for illness, vacation, jury duty, or compensatory time off.

As you know, in order to qualify for exemption under Section 13(a)(1) of the FLSA, an employee must meet all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in 29 CFR Part 541. As section 541.602(a) explains, subject to exceptions found in Section 541.602(b), "an employee will be considered to be paid 'on a salary basis' within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed." You state that the timekeeping policy "has NOT been established for the purpose of wage payment tied to hours actually worked." Based on the information you have provided, the requirements of the policy do not conflict with the "salary basis" of payment under the FLSA. As the preamble to the new Part 541 Regulations explains, employers may require exempt employees to record and track their hours and to work a specified schedule, and may take deductions from accrued leave accounts without affecting the employees' exempt status (69 Fed. Reg. 22122, 22178 (April 23, 2004)).

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.

We trust that the above information is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

*Note: * The actual name(s) was removed to preserve privacy.*