



August 6, 2004

FLSA2004-7NA

Dear *Name**,

This is in response to your letter requesting an opinion regarding the application of the Fair Labor Standards Act (FLSA) to certain employees employed by the *Name**. You wish to know whether the *Name** meal period policy would cause the meal time to be compensable under section 785.19 of 29 CFR Part 785.

You state that the employees work in the *Name** and are responsible for counting fare revenue. During their 30-minute meal period, the employees are restricted to a small lunchroom and cannot change clothes, make phone calls, or smoke, and cannot leave the building. The major concern of the *Name** which governs the entire organization of the employees' work environment and working time, is the security of the fare revenue. The employees are allowed, however, to eat their meals in an uninterrupted manner.

As you are aware, section 785.19 of 29 CFR Part 785, states that bona fide meal periods that occur during the scheduled workday are not hours worked if the employee is completely relieved from duty for the purposes of eating regular meals. It is not necessary that an employee be permitted to leave the premises. As you recognize, the courts have applied this provision by examining whether the meal period time is spent primarily for the benefit of the employer or the employee. See Reich v. Southern New England Telecommunications, Corp., 121 F.3d 58 (2nd Cir. 1997).

During the meal period, the employees are required to stay on the employer's premises and required to refrain from certain activities. Because of the nature of the work—counting fare revenues of the *Name**—the employer has instituted these policies in order to maintain security and avoid theft by employees. However, the mere fact that the employees are not allowed to leave the premises and are otherwise slightly restricted in their activities during the meal period does not make the time hours worked. Based on the information provided, it appears that the employees are completely relieved from their duties, are allowed to take their meals uninterrupted by the employer, and are provided sufficient time to eat their meal. We conclude that the meal period as described does not constitute compensable worktime.

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,

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).*