



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

FLSA2008-6

September 22, 2008

Dear **Name***:

This is in response to your request for an opinion regarding whether compensation for on-call time in a specific week may be averaged over a two-week period for purposes of computing the regular rate under the Fair Labor Standards Act (FLSA).¹ The regular rate of pay must be computed on a workweek basis and the payment for on-call time must be attributed to the particular workweek that includes the period of time during which the employees were on-call.

Your client is a city that employs hourly workers at its Water Treatment Plant (Plant). The employees may be on call for one week every month. They are paid \$2.50 per hour for on-call hours pursuant to a collective bargaining agreement. You ask that we assume for the purpose of this response that the on-call compensation is not pay for hours worked under the FLSA. You state that while on call, employees must wear a pager and be able to respond or connect to a computer system within 30 minutes in the event of a water emergency. Employees may utilize their time as they please and are not confined to their homes or required to carry a remote laptop terminal with them. In the event that an emergency requires them to return to duty, employees are paid wages for actual work performed. You state that employees are rarely called back to work and may go many months without having to report for duty when they are on call.

The employees are paid every two weeks. An employee may be on call for only one of the weeks during the pay period. The city understands that on-call pay must be included in computing the regular rate of pay for overtime purposes. Your client wishes to calculate the employee's regular rate by spreading the on-call pay across the two-week pay period in which the on-call compensation is received. For example, if an employee earning \$10 per hour works 40 hours in workweek one of a two-week pay period and works 45 hours and earns \$100 of on-call compensation in workweek two, the city proposes to calculate the regular rate of pay for purposes of calculating the overtime rate by dividing the \$950 earned in the two-week pay period by the 85 hours worked. This calculation results in a regular rate of pay of \$11.18 per hour to be used in calculating the overtime worked in workweek two. This method of calculation would result in a total payment to the employee of \$977.95.

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.

The principles for computing an employee's regular rate of pay for overtime pay requirements are discussed in the FLSA regulations at 29 C.F.R. Part 778. The FLSA requires that overtime compensation be paid at a rate of not less than one and one-half times the regular rate of pay for all hours worked in excess of 40 in a workweek. The regular rate of pay of an employee "is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid." [29 C.F.R. § 778.108](#). The FLSA takes the single workweek as its standard and does not permit the averaging of hours over two or more weeks whether the employee is paid on a daily, weekly, biweekly, monthly, or other basis. *See* [29 C.F.R. § 778.104](#).

An employee who "is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he can be reached is not working while on call." [29 C.F.R. § 785.17](#). The payment received by employees for "on call" time, however, is "paid as compensation for performing a duty involved in the employee's job" and is therefore not excludable from the regular rate under section 7(e)(2) of the FLSA. [29 C.F.R. § 778.223](#). As a result, the payment must be included in the employee's regular rate. *See id.*; Wage and Hour Opinion Letter April 22, 1969 (copy enclosed). Moreover, because the specific hours for which on-call pay was earned are identifiable, the payment for on-call time must be attributed to the workweek in which the on-call hours occurred. *See* [29 C.F.R. §§ 778.209, .233](#)

Therefore, it is our opinion that the computation of the regular rate of pay for on-call employees must be based upon a workweek, and payment for on-call time must be attributed to the workweek in which the employee completed the on-call hours. In the example above, this would result in a regular rate for workweek two of \$12.22 per hour, and a total payment to the employee of \$980.55.

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

Enclosure: Wage and Hour Opinion Letter April 22, 1969

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