



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

March 2, 2009

Dear **Name***:

Enclosed is the response to your request for an opinion letter signed by the then Acting Wage and Hour Administrator Alexander J. Passantino on January 16, 2009 and designated as Wage and Hour Opinion Letter FLSA2009-30. It does not appear that this response was placed in the mail for delivery to you after it was signed. In any event, we have decided to withdraw it for further consideration by the Wage and Hour Division. We will provide a further response in the near future.

The enclosed opinion letter, and this withdrawal, are issued as official rulings of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. See [29 C.F.R. §§ 790.17\(d\), 790.19](#); *Hultgren v. County of Lancaster, Nebraska*, 913 F.2d 498, 507 (8th Cir. 1990). Wage and Hour Opinion Letter FLSA2009-30 is withdrawn and may not be relied upon as a statement of agency policy.

Sincerely,

John L. McKeon
Deputy Administrator for Enforcement



FLSA2009-30

This Opinion Letter is withdrawn.

January 16, 2009

Dear **Name***:

This is in response to your request for an opinion regarding whether certain job bonuses must be included in the regular rate under section 7(e) of the Fair Labor Standards Act (FLSA).¹ Based on the information provided, it is our opinion that the job bonuses should be included in the regular rate.

Your client, an oilfield services company, provides cementing, acidizing, fracturing, sand control, and other services for drilling and completion of oil and gas wells and remedial work on existing wells in the petroleum industry. The company employs non-exempt equipment operators who are paid an hourly wage above the minimum wage and overtime wages for hours worked in excess of 40 hours per week. Generally, equipment operators operate commercial vehicles, such as tractor trailers, semi trucks, and/or tanker trucks on a daily basis between district offices and customers' oil and gas well locations to deliver company products, service tools, and equipment. Equipment operators generally load and unload the vehicle; participate in rigging the equipment at the customer's worksite, such as connecting hoses and high pressure pipes to equipment at the customer's wellhead; and operate the equipment for the desired service at the well site.

The company wishes to pay its equipment operators, in addition to hourly wages, a "job bonus," consisting of a flat dollar amount per day (*e.g.*, \$100.00 for each day worked). The "job bonus" would be paid for each day worked, and does not appear to be conditioned on any other factor. You ask whether such a bonus should be included in the regular rate.

With limited exceptions, the FLSA provides that the "regular rate" includes "all remuneration for employment paid to, or on behalf of, the employee." 29 U.S.C. § 207(e). The proposed job bonus meets none of the exceptions for being excluded from an employee's regular rate of pay and, therefore, must be included in the regular rate.² *See* 29 U.S.C. § 207(e)(1) – (7).

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

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.

² In reaching this conclusion, we express no opinion as to whether the equipment operators are eligible for any of the minimum wage and/or overtime exemptions provided by the Act, including, but not limited to, the exemption provided under 29 U.S.C. § 213(b)(1).

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).**