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

FLSA2005-17NA

June 14, 2005

Dear **Name*:**

This is in response to your request for an opinion concerning the application of the overtime requirements of section 7 of the Fair Labor Standards Act (FLSA) to employees who work at two different health care facilities operated by one management company. It is our opinion that all hours worked at any of the facilities must be combined for the purpose of calculating hours worked under the FLSA.

As you described, two individuals own and operate 19 health care facilities, which you refer to as the "core" facilities. These two individuals also own and operate a management company that manages each "core" facility. Additionally, there are 19 health care facilities ("non-core" facilities) owned by other individuals but operated under the same business name. The two individuals who own the "core" facilities have no ownership in the "non-core" facilities but do own a management company that is responsible for management of all "core" and "non-core" facilities. The management company ensures proper staffing of the facilities and provides payroll and other management services. Sometimes the management company will provide the opportunity for an employee to work for one "core" and one "non-core" facility or two different "non-core" facilities in the same week. Other times employees arrange such work on their own. The "core" and "non-core" facilities have a common benefits package including 401K and health insurance, which are provided to the employees even when they are working extra hours at a "core" or "non-core" facility which is not their regular facility. In a phone conversation with a member of the Wage and Hour Division staff, you indicated that each facility is responsible for scheduling employees at their facility. Employees of any "core" or "non-core" facility are not given priority for opening and vacancies at other "core" or "non-core" facilities.

Based on the above described facts, you ask for the following:

1) When an employee, in the same workweek, works for one "core" facility and one "non-core" facility, must the hours be grouped for purposes of overtime calculation?
2) When an employee, in the same workweek, works for two different "non-core" facilities, must the hours be grouped for purposes of overtime calculation?

The FLSA defines employer, employee and employ at 29 U.S.C. § 203 (d), (e) and (g), respectively. The courts and the Department of Labor have construed these terms to mean that more than one employer may employ the employee during the same workweek and that these employers may be jointly responsible for compliance with the FLSA for this employee. The Department states that 29 C.F.R. § 791.12, footnote 5, "where two or more employers stand in the position of "joint employers" and permit or require the employee to work more than the number of hours specified in section 7(a), both the letter and the spirit of the statute require payment of overtime."

Whether an employment relationship by two or more employers is to be considered a joint employment situation so that an employee's hours or work for two or more employers must be aggregated, or whether those ours are to be considered separate and distinct employments for purposes of the FLSA, will depend on all the facts in a particular case. 29 C.F.R. § 791.2(a) (copy enclosed). When employment "by one employer ins not completely disassociated from employment by the other employer(s)," joint employment exists. Id. For example, when the "employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by or is under common control with the other employer," a joint employment relationship exists. See 29 C.F.R. 791.2(b)(1)(3). A joint employment relationship also generally will be found where there is an arrangement between the employers to share an employee's services or where one employer is acting in the interest of the other employer in relation to the employee. 29 C.F.R. 791.2(b(1)-(2). The arrangement need not be a "formal" one in order to lead to joint employment.

Factors that are relevant in finding joint employment include, for example, whether there are common officers or directors of the companies; the nature of the common management support provided; whether employees have priority for vacancies at the other companies; whether there are any common insurance, pension or payroll systems; and whether there are any common hiring seniority, recordkeeping or billing systems. See Chao v A-One Medical Services, Inc., 346 F.3d 908 (9th Cir. 2003) and Opinion Letters dated July 13, 1998 and May 20, 1999. (copies enclosed). As state above, the "core" and "non-core" facilities, the management company is exercising control over both groups and facilities. This control, coupled with the fact that the same two individuals who own the "core" facilities own the management company, leads us to the conclusion that the "core" and "non-core" facilities are joint employers for purposes of the FLSA. Joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the FLSA, including the overtime pay provisions, with respect to the entire employment for the particular workweek. 29 C.F.R. 791.2(a); Field Operations Handbook, §32j12 (copy enclosed). Therefore, your client's facilities must group all of the hours an employee works in a given week, for any combination of "core" and "non-core" facilities for purposes of calculating employee overtime.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of 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 questions presented. Existence of any other factual or historical background not obtained 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 a pending private litigation concerning the issue addressed herein. You have also represented that his 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 is information is responsive to your inquiry.

Sincerely,

Barbara Relerford
Office of Enforcement Policy
Fair Labor Standards Act Team

Enclosure: 29 CFR 791.2
Opinion Letters dated July 13, 1988 and May 20, 1999
Field Operations Handbook 32j12