



January 17, 2006

FLSA2006-1NA

Dear *Name** :

This is in response to your request for an opinion regarding whether time spent traveling to a location to wash before a meal break, as well as the time spent on that break, constitutes compensable work time under the Fair Labor Standards Act (FLSA). You write as the president of a local union that represents the employees at issue. Based on the facts you describe, we conclude that the travel and meal time for these employees is not compensable under the FLSA.

Under a national collective bargaining agreement (CBA), regular full-time delivery personnel are entitled to a half-hour lunch. They generally take their lunch when they are away from their work location and making deliveries. The CBA provides for reasonable wash-up time when an employee is performing dirty or toxic work. Under the CBA, the local union may negotiate for additional or longer wash-up periods. You negotiated an agreement with the employer in 1996 that affords employees time on the clock to wash before and after breaks, lunch, and using the rest room, and before going home.

When an employee eats lunch while on a route, the employer automatically deducts a half-hour from the work hours because there is no means to punch in or out on a time clock. Normally, if the employee uses the employer's vehicle to travel to a lunch location, the half-hour lunch period begins when the employee leaves the delivery route, and ends when the employee returns to the route. Travel time to the lunch location is considered part of the employee's lunch time. In most cases, the employee travels to a wash-up location that is also the lunch location.

You indicate that the employer agrees that delivery personnel are allowed time on the clock to wash up, but that because the local agreement does not specifically state that the time spent traveling to the wash-up location must be paid, the employer feels that the travel time is part of the half-hour lunch period. The employee is allowed to extend the lunch period by the one or two minutes spent washing up.

You ask the following questions:

1. Is an employee entitled to paid travel time to perform the wash-up before lunch?

With regard to time relating to the additional wash-up that you negotiated that applies even though the employee is not performing dirty or toxic work, we do not consider the time spent traveling to a location to wash up hours worked under the FLSA. The lunch period begins when an employee leaves the delivery route. Bona fide meal periods are not compensable hours worked. 29 C.F.R. § 785.19. The employee may elect to travel to a lunch and wash-up location, and the agreement allows an employee to extend the half-hour lunch period by the one or two minutes spent washing up. The agreement to pay for the wash-up time does not convert the entire lunch period, which may include travel time to the lunch and wash-up location if the employee chooses, into hours worked, because there is no agreement to pay for anything except the wash-up time. See 29 C.F.R. § 778.320 (copy enclosed).

2. If an employee chooses to wash up during his or her half-hour lunch period, would the entire lunch period be regarded as hours worked under the FLSA?

Under the FLSA the entire lunch period would not be regarded as hours worked merely because an employee chooses to wash up during the lunch period. As stated in 29 C.F.R. § 785.19, the employee must be "relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period." An employee who washes up during the lunch period will receive a 30-minute meal period because the agreement allows the employee to extend the half-hour lunch period by the time spent washing up. We would not consider a bona fide meal period to be compensable merely because of infrequent, brief interruptions. See Wage Hour Opinion Letters dated April 6, 1992 and July 29, 1985 (copies enclosed). Furthermore, the additional wash-up times that you negotiated are for the benefit of the employees and are not part of their job duties. "Meal periods are



compensable under the FLSA when the employees during a break perform duties predominantly for the benefit of the employer.” See *Reich v. S. New England Tel. Communications Corp.*, 121 F.3d 58, 65 (2d Cir. 1997). Here, the activity of washing up during a lunch period is not for the benefit of the employer, and the agreement simply affords the employee time on the clock to wash up.

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 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 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 this letter is responsive to your inquiry.

Sincerely,

Barbara R. Relerford
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures

29 C.F.R. § 778.320
WH Opinion Letter April 6, 1992
WH Opinion Letter July 29, 1985

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