

FLSA-258

January 7, 1976

This is in reply to your letter of December 6, 1975, regarding the treatment under the Fair Labor Standards Act of time spent in travel between your shop and the various job sites to which employees are assigned. You indicate the following facts:

A man is employed on the basis of working whenever and wherever the job is. We handle trade shows and conventions and he works at hotels and/or convention halls. Job sites change almost daily so men report to shop and then are sent to different job sites.

Section 785.38 of Interpretative Bulletin, Part 785 establishes the general rule in this area, namely, "Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the workplace is part of the day's work, and must be counted as hours worked regardless of the contract, custom, or practice. Similarly, where an employee is required to report back to the employer's premises at the end of the workday the travel is "all in the day's work" and is regarded as working time.

You refer to section 785.50, which states that under section 4 of the Portal Act, "walking, riding, or travel to and from the actual place of performance of the principal activity" are not compensable. However, as noted in section 790.7 of Part 790, where an employee travels outside his regular working hours at the direction and on the business of the employer, the travel would not be "walking, riding or traveling" of the type referred to in section 4. Thus, it appears that the travel from your shop to job and return is not governed by the Portal Act, but must be counted as hours worked. Where the total hours worked by an employee, including time spent in such travel, exceeds 40 a week overtime pay at one and one-half times the regular rate of pay is required for the hours over 40.

You may also be interested in the discussion in section 778.320 of Interpretative bulletin Part 778. As there indicated, in the case of travel which is not hours worked, the agreement of the parties to provide compensation for such hours implies an agreement to regard them as working time even if they would not otherwise be required to be so regarding under the Fair labor Standards Act. The agreement of the parties is respected if reasonable.

Under the Portal Act, such travel time would be counted only to the extent that it is made compensable by contract, custom or practice, and an employee may be paid for the time so determined. Since the travel time is regarded as hours worked, however, the employee must be paid at time and one-half for overtime on the basis of the total hours worked. (See section 790.9.) Thus, in a situation where an employee works 40 hours on the job and has 10 hours of compensable travel time, he is entitled to 10 hours of premium overtime pay.

Sincerely,

Administrator

Enclosures