

FLSA-627

December 11, 1979

This is in reply to your letter of October 24, 1979, in which you ask if the cost of certain items such as free drinks given to waiters or waitresses which they in turn can sell to customers and retain the proceeds or give to customers in expectation of receiving larger gratuities; free tickets to concerts and other events given to the waiters or waitresses which they may use in any way they wish, including selling such tickets to their customers; uniforms provided by the employer of such a nature that the employees may wear them as ordinary clothing; and a 50% discount given employees on meals they eat at the establishment, may be substituted for payment of wages under the Fair Labor Standards Act.

The Fair Labor Standards Act is the Federal law of most general application concerning wages and hours of work. The major highlights of this law with regard to wage payments are contained in the enclosed copy of 29 CFR Part 531.

Section 3(m) of the Act states that "wage" paid to any employee includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to the employees. However, as stated in sections 531.3 and 531.32 of the enclosed bulletin, the cost of furnishing "facilities" which are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages. Among these items which may not be considered as facilities are the free drinks given to employees, uniforms which they may wear as street clothing, and free tickets to special events. However, the reasonable cost or fair value of meals actually received may be used in meeting the minimum wage obligation.

Also, you may wish to note that the language of the Act and the controlling court decisions make it clear that an employee cannot waive his or her statutory right to be paid in accordance with the minimum wage and overtime pay provisions of the Act. In Brooklyn Savings Bank v. O'Neil 324 U.S. 697, the Supreme Court of the United States said that the policy consideration of Congress in enacting the Fair Labor Standards Act forbids waiver of basic minimum wage and overtime wages under the Act."

Information from the Fort Lauderdale Area Office indicates that the fact-finding phase of an investigation of your client's business under the Fair Labor Standards Act has been completed.

Our people there are fully qualified to ensure that the determinations made with respect to your client's status of compliance are in conformance with the provisions of the Act.

Sincerely,

C. Lamar Johnson
Deputy Administrator

Enclosure