

FLSA-346

February 20, 1987

This is in further response to your letter of August 11, 1986, concerning the application of the Fair Labor Standards Act (FLSA) to certain employees of the State of ***. Additional information concerning your request for an opinion in this matter was provided by *** in a telephone conversation with a member of my staff on January 13. The subject of your inquiry concerns the manner in which time spent sleeping may be excluded from the compensable hours worked by individuals who are employed as youth specialists by the State. We regret the delay in responding to your inquiry.

The FLSA is the Federal law of most general application concerning wages and hours of work. It requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

The duties of a youth specialist include supervising juveniles who have been assigned by the courts to a State-operated youth camp as part of a rehabilitative and educational program. When they are working at a youth camp, which is a permanent facility, the youth specialists are normally scheduled to work for 8 hours a day and, since they do not reside on the premises, commute to and from their residences on a daily basis.

Occasionally, the youth specialists are required to accompany juveniles, who are assigned to their facility, on camping expeditions for periods of from 2 to 4 days at a time. These camping expeditions, or "trecks," usually involve a trip to a wilderness area in a National or State park where a temporary camp site is established. These camp sites are in remote or isolated areas, and they provide none of the support or recreational facilities which are commonly found in public camp sites in these same parks. Although "trecks" are normally scheduled to take place once or twice a month, the same youth specialists are not always assigned to participate in them.

In your letter, you state that the youth specialists "have custodial care for the assigned juveniles for the entire period of the 'treck'" and that the youth specialists "may sleep in tents . . . at the camp sites." You wish to know if this time spent sleeping may be excluded for the purpose of applying FLSA, from the total hours worked by the youth specialists during the "treck."

The rules concerning the determination of hours worked under FLSA are set forth in Interpretative Bulletin, 29 CFR Part 785 (copy enclosed). In this regard, the provisions of section 785.22 of the regulations are specifically applicable to the circumstances involving the youth specialists on "trecks" as described in your inquiry. Pursuant to this section, where an employee is required to be on duty for 24 hours or more, such as a youth specialist who is assigned to a "treck," the employer and the employee may agree to exclude a bona fide regularly scheduled sleeping period of not more than 8 hours from the employee's hours worked under certain conditions. The conditions for the exclusion

of such a sleeping period from hours worked are (1) that adequate sleeping facilities are furnished by the employer and (2) that the employee's time spent sleeping is uninterrupted.

You refer to the fact that youth specialists are occasionally awakened during their sleeping period in order to "handle circumstances arising at the camp with the juveniles." When an employee must return to duty during a sleeping period, the length of the interruption must be counted as hours worked. Furthermore, if these interruptions are so frequent that the employee cannot get at least 5 hours of sleep during the scheduled sleeping period the entire period must be counted as hours worked.

You are also concerned about the exclusion of a sleeping period where, as in the case of a youth specialist in a wilderness area, the employee cannot leave the work area. However, the inaccessibility of the location or the fact that the youth specialist cannot leave at any time during the "treck" would have no effect on the application of the provisions of section 785.23 of the regulations to circumstances where they may otherwise be appropriately applied. Therefore, it is our opinion that the time spent sleeping by youth specialists on a "treck" may be properly excluded from the employees' hours worked under FLSA pursuant to the conditions as described above and as explained in Part 785.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator

Enclosure