

FLSA 1209

March 12, 1987

This is in further response to your letter in which you request an opinion under the Fair Labor Standards Act (FLSA) concerning the compensability of time spent by employees of the *** Fire Department (the Fire Department) receiving a medical certificate prior to returning to duty from sick leave. We regret the delay in responding to your inquiry.

You state that the sick leave policy of the Fire Department requires that, prior to returning to duty from sick leave, employees must visit their private physician and obtain a certificate stating that they are able to return to duty. Since the Fire Department requires that the employees obtain such a certificate during their off-duty hours, you ask if this time constitutes hours worked under FLSA. In a January 28 telephone conversation, *** of your staff advised a member of my staff that the employees in question are not on sick leave due to an on-the-job injury.

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.

On January 16, the Department of Labor (the Department) published final regulations, 29 CFR Part 553, which implement the Fair Labor Standards Amendments of 1985. These regulations contain rules concerning certain statutory exclusions and exemptions, recordkeeping requirements, and compensatory time provisions, which apply to State and local government workers in general, in addition to specific rules for volunteers and for fire protection and law enforcement employees. A copy of the regulations is enclosed for your information.

The enclosed copy of Interpretative Bulletin, 29 CFR Part 785, constitutes the official position of the Department with respect to compensable hours of work. As explained in section 785.43, in order for the time spent waiting for or receiving medical attention or treatment to be compensable, it must occur during the employee's normal work hours on days when the employee is working. Therefore, it is our opinion that the time spent by employees of the Fire Department visiting their private physician outside of normal working hours would not be considered compensable hours of work even if they are instructed to do so by their employer as a condition for return to work after an absence due to illness.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator

Enclosures