

FLSA-1434

August 17, 1987

This is in further response to your letter concerning the application of section 7(j) of the Fair Labor Standards Act (FLSA). Specifically, you request an opinion concerning the definition of the term "workday" as used in section 7(j) of FLSA. 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.

Section 7(j) of FLSA provides that hospital and residential care establishments may adopt, by agreement with the employee(s), a 14-day overtime period in lieu of the usual 7-day workweek, if the employee(s) is paid at least one and one-half times the regular rate of pay for hours worked in excess of 8 in a day and 80 in such 14-day work period. This partial overtime pay exemption is discussed in more detail in section 778.601 of Interpretative Bulletin, 29 CFR Part 778.

The term "workday" as used in FLSA consists of 24 consecutive hours beginning at the same time each calendar day. A 7-day workweek consists of 168 consecutive hours (i.e., seven consecutive 24-hour workdays), beginning at the same hour and on the same calendar day each calendar week. Under section 7(j) of FLSA, the 14-day work period consists of 336 consecutive hours (i.e., 14 consecutive 24-hour workdays), beginning at the same hour and on the same calendar day. The 14-day period may begin at any hour and on any day designated by the employer. The first workday begins at the time the 14-day work period begins and the fourteenth workday ends at the time the 14-day work period ends. While neither the workday nor the 14-day work period need coincide with the calendar day or calendar weeks, both, like the calendar period, are fixed and regularly recurring periods. When one workday or 14-day work period ends another immediately begins. In addition, it should be noted that an employer under section 7(j) of FLSA can schedule all of his or her employees to work the same 14-day work period, or schedule separate groups or individual employees to work different 14-day work periods. However, once a 14-day work period is established, it cannot be changed unless the change is intended to be permanent and is not intended to evade the overtime pay requirement of FLSA.

Thus, in answer to your question, the time a 24-hour workday begins and ends is determined by the employer, subject to the constraints discussed above, and is not necessarily determined from the time an employee commences work.

We trust that this satisfactorily responds to your inquiry. If you have any further questions, do not hesitate to let us know.

Sincerely,

Paula V. Smith
Administrator

Enclosure