

## FLSA-1059

January 6, 1988

This is in further response to your letter of October 13, with enclosures, on behalf of Mr. \*\*\*. Mr. \*\*\* is concerned about the application of the Fair Labor Standards Act (FLSA) to supplemental nursing personnel provided on a temporary basis to hospitals and other health care providers.

In his letter, your constituent says that he is required by FLSA to pay overtime premium pay to his nursing personnel when they work in excess of 40 hours in a workweek, whereas hospitals are permitted to schedule nurses to work a total of 80 hours during a two-week period before overtime premium compensation be paid. Mr. \*\*\* requests that you look into this matter and initiate legislation which would allow temporary help companies, who provide supplemental nursing personnel to hospitals to pay overtime pay to its employees after 80 hours in a two-week period.

The FLSA is the Federal law of most general application concerning wages and hours of work. This law 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 a partial overtime pay exemption for employers engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises. This partial overtime pay exemption permits employers to establish a 14-day work period and to pay overtime compensation at a rate of time and one-half the employee's regular rate of pay for all hours worked over 8 in any workday and in excess of 80 hours in the 14-day work period provided, there is an agreement or understanding between an employer and employee before the performance of work.

However, section 7(j) of FLSA does not apply to the employees of a temporary help company, such as , because they are not employed by an "employer engaged in the operation of a hospital" as required by that section of FLSA. Since section 7(j) does not apply, the temporary help company must pay overtime premium pay to its nonexempt employees after 40 hours worked in a workweek. Any change in the statutory language of FLSA would, of course, require congressional action.

It should be noted that for purposes of the enforcement of FLSA, the Wage and Hour Division will not take exception to a claim by a hospital that section 7(j) of FLSA applies during any 14-day work period where a temporary employee, who is jointly employed by a temporary help company and the hospital, works exclusively during the 14-day work period for a single hospital, provided that, before performance of the work, an agreement is made between the hospital and the employee to use the 14-day work period instead of the normal workweek.

We trust that the above discussion is responsive to your constituent's inquiry. Please let us know if we may be of further assistance.

Sincerely,

Paula V. Smith  
Administrator