

FLSA-1119

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Hours Worked in Residential Care (Group Home) Establishments--Sleep Time and Related Issues -- Enforcement Policy

A major concern of employers operating residential care (group home) facilities continues to be the issue of what constitutes working time (hours worked) for their employees who are subject to the minimum wage and overtime pay provisions of the Fair Labor Standards Act (FLSA). The duties of most employees of such residential care facilities require them to remain on their employer's premises overnight. Although permitted to sleep, group home employees are required to remain on the premises to be available to clients in case of emergencies or personal crises. The employees are often provided with private quarters and other amenities, which together can be characterized as constituting a home-like environment.

The following enforcement policy statement is intended to assist employers and employees by restating and clarifying the position of the Wage and Hour (WH) Division with respect to certain sleep time and other hours worked issues. This statement will provide further clarification and guidance as to the conditions under which WH, in its enforcement of the FLSA, will not require that sleep time of such employees be compensated.

Background and Summary

Since 1981, WH has issued a number of letters to representatives of the residential care (group home) industry in response to their questions regarding sleep time. Employers were advised that a special position with regard to sleep time had been adopted which is a departure from the normal rules stated in Interpretative Bulletin, 29 CFR Part 785, sections 785.20 through 785.23.

This special position allows "relief" employees who are provided with private quarters in a home-like environment to be treated the same as "full-time" employees (i.e. those who either reside on the employer's premises permanently or for "extended periods of time") whom they relieve with respect to deducting sleep time. This special position was developed out of concern for the apparent inequities of requiring compensation for sleep time for relief employees but not for full-time employees being relieved who work under identical conditions at the same facility.

An essential requirement for this special position is that a group home have one or more full-time employees who either reside on the premises permanently or "for extended periods of time" (IB 29 CFR 785.23). In a 1981 letter, WH took the position that residing on the employer's premises 120 hours a week or 5 consecutive days or nights, would qualify an employee as residing on the premises for extended periods of time within the meaning of IB section 785.23. Examples were given to illustrate what was meant by

extended periods of time: 9:00 a.m. Monday to 5:00 p.m. Friday; or 9:00 p.m. Monday until 9:00 a.m. Saturday (ignoring short periods of off-duty time during the day). Based upon a review of recent compliance actions by WH it has become clear that further guidance is necessary for employers and employees in the industry.

Enforcement Policy

The following terms which are used in the enforcement policy statement set forth below have caused some difficulty and are being defined for further guidance:

"day" - (except in the phrase "days and nights") means a 24-hour period during which an employee works (is compensated for) at least eight hours.

"workweek" - means seven consecutive 24-hour periods (29 CFR 778.105).

"on-duty" - means the period of time the employee is required to be on the employer's premises or otherwise working for the employer.

"private quarters" - means living quarters that are furnished; are separate from the "clients" and from any other staff members; have as a minimum the same furnishings available to clients (e.g. bed, table, chair, lamp, dresser, closet, etc.) and in which the employee is able to leave his or her belongings during on-and off-duty periods.

"home-like environments" - means facilities including "private quarters" as above and also including on the same premises facilities for cooking and eating; for bathing in private; and for recreation (such as TV). The amenities and quarters must be suitable for long-term residence by individuals and must be similar to those found in a typical private residence or apartment, rather than those found in institutional facilities such short-term facilities for travelers.

Under circumstances where an employee does not maintain his or her permanent residence on the premises and does not otherwise reside on the premises 7 days a week, WH will consider an employee who sleeps in private quarters, in a homelike environment, to reside on the premises for an extended period of time within the meaning of IB 785.23 if the employee resides on the premises for a period of at least 120 hours in a workweek.

WH is refining and restating the minimum conditions required to meet this rule. An employee will found to reside on the premises for extended periods of time if:

(1) the employee is on duty at the group home and is compensated for at least eight hours in each of five consecutive 24-hour periods; and

(2) the employee sleeps on the premises for all sleep periods between the beginning and end of this 120-hour period.

Any 24-hour period can be utilized, and the eight compensated hours per 24-hour period need not be consecutive. Thus, an employee who is on duty and compensated for the period 5:00 p.m. to 10:00 p.m. Monday, 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 10:00 p.m. Tuesday through Friday, and 6:00 a.m. to 9:00 a.m. Saturday, and who sleeps on the premises (10:00 p.m. to 6:00 a.m.) for all sleep periods from Monday night through Friday night, has been compensated for at least eight hours in five consecutive 24-hour periods between 5:00 p.m. Monday and 5:00 p.m. Saturday. The employee would also have slept five consecutive nights on the premises. Provided the other conditions were met, this would be considered to be residing on the premises for an extended period of time. Similarly, an employee who is on duty and is compensated from 6:00 a.m. to 9:00 a.m. and 5:00 p.m. to 10:00 p.m., Monday through Friday, and who sleeps Monday through Thursday nights on the premises, would be considered to reside on the premises for extended periods of time. For convenience, these employees are called "full-time" employees.

Where one or more employees meet the "full-time" employee/residing on the premises test, WH, as an enforcement policy, will likewise apply the provisions of IB 785.23 to one or more "relief" employees who reside on the premises for one to three nights, provided these employees are on duty and are compensated for at least eight hours in each 24-hour period in question and sleep on the premises all intervening nights. Although as a general matter it is anticipated that there will be no more than one relief employee for each full-time employee, it is possible that there may be more than one. However, to come within the provisions of this special enforcement policy, the relief employee must be relieving a full-time employee. That is, the full-time employee and the employee(s) relieving that employee may not be duty for more than a combined total of seven days and seven nights in each workweek. Furthermore, a part-time employee will not be considered a relief employee if that employee and the full-time employee being relieved are on duty simultaneously for more than one hour a day.

In order to deduct sleep time for full-time and relief employees, such employees must be provided private quarters in a homelike environment. Further, a reasonable agreement must be reached, in advance, regarding compensable time. The employer and the employee may agree to exclude up to eight hours per night of uninterrupted sleep time. They may also agree to exclude a period of off-duty time during the day when the employee is completely relieved of all responsibilities. These exclusions must be the result of an employee-employer agreement and not a unilateral decision of the employer. Such an agreement should normally be in writing to preclude any possible misunderstanding of the terms and conditions of an individual's employment.

Where sleep is to be deducted, the employer should determine if the following criteria are met:

- (1) the employer and the employee have reached agreement in advance that sleep time is being deducted;
- (2) adequate sleeping facilities with private quarters (see above) were furnished;

(3) if interruptions occurred, employees in fact got at least five hours of sleep during the scheduled sleeping period;

(4) employees are in fact compensated for any interruptions in sleep; and

(5) no more than eight hours of sleep time is deducted for each full 24-hour on-duty period.

Sleep time may not be deducted for "relief" or other part-time employees who are not relieving a "full-time" employee (as defined above), unless such employees are themselves on duty for 24 hours or more as provided in IB 785.22. It should again be noted that an off-duty period (free-time) during a weekday for such employees "brakes" an on-duty period for the purposes of IB 785.22. For example, a duty period from 5:00 p.m. of one day to 5:00 p.m. the following day, during which an employee has uncompensated free time between 9:00 a.m. and 3:00 p.m. of the on-duty period, is not considered to be a 24-hour duty period.

Interim Nonenforcement Policy

With respect to suspended investigations of group homes, which were commenced before the date of this policy statement, WH is adopting a nonenforcement policy with regard to the payment of back wages resulting only from unpaid sleep time. This policy is being adopted in light of the apparent confusion and/or misunderstanding on the part of the industry with regard to the compensability of sleep time for employees employed in residential care facilities.

The employees involved in such suspended investigations will be advised of this limited nonenforcement policy. This limited nonenforcement policy will not be followed with respect to back wages resulting from any other violations of FLSA. WH will follow normal procedures with respect to other violations of FLSA.

WH will not initiate any new investigations of residential care facilities which involve only an assertion that improper sleep time deductions are being made by a group home until 90 days from the date of this enforcement policy statement.

This nonenforcement policy will not apply to any cases that the Department of Labor is currently litigating. Furthermore, nothing in this entire enforcement policy statement is intended to affect any employee's independent right under section 16(b) of FLSA to assert that sleep time is compensable.