

FLSA-1054

September 13, 1988

This is in further response to your letter concerning the application of section 7(i) of the Fair Labor Standards Act (FLSA) to certain employees of a hotel and conference center. We regret the delay in responding to your inquiry.

You state that your client offers a complete package of conference services to customers for which it charges a fixed cost per participant per day for the entire package. A typical package includes sleeping accommodations, meals, conference rooms and supplies, conference service coordinators, and access to the hotel's resort and spa facilities. Conference participants do not have to make any additional payments since all services are covered by the fixed charge per participant per day. The total package charge does not separately identify a specific service charge. However, your client has determined that certain employees shall receive as partial compensation, a "service charge" which is a percentage of the value of the services they render to the guests. For example, servers in the dining room would receive 15 percent of the value of the food they serve as additional compensation besides their base hourly wage. You ask whether the requirements of section 7(i) of FLSA are met when the service charges received by the employees are determined and paid solely by the employer to the employees, and are not specifically billed to the guest or collected as a service charge from the guest by the employer.

Under section 7(i) of FLSA, an employee of a retail or service establishment who is paid in full or in part on a commission basis may qualify for exemption from the overtime pay requirements of section 7(a) in a workweek if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum wage (currently \$3.35 an hour), and (2) more than half of the employee's compensation for a representative period (not less than one month) represents commissions on goods or services. As we have previously advised, a service charge levied on a customer by an establishment such as a hotel or restaurant for services by waiters or waitresses may qualify as a commission under section 7(i) since such charge bears a direct relationship to the sale of goods or services by the establishment. We also pointed out that tips received by such employees from the customers are not commissions for the purposes of section 7(i).

Section 7(i) does not require that otherwise bona fide commissions on goods or services be specifically billed to the guest or collected as a service charge from the guest. It is not necessary for your client to specify to its guests for purposes of section 7(i) that its package includes a service charge which is passed on to its employees.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator