

FLSA - 1158

December 19, 1988

This is in response to your letter of April 4 regarding the request of employees of the City of *** Police Department (the Department) to be compensated at a time and one-half rate of pay for hours not worked because of illness or injury. Employees currently receive straight time pay while recuperating. The Department places certain restrictions on the activities of these employees, providing guidelines as to the circumstances in which it is acceptable for them to leave home.

The Fair Labor Standards Act (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. The provisions of FLSA apply to all employees of State and local governments except to those who are specifically excluded in section 3(e)(2)(C) of FLSA and those who may qualify for exemption from the minimum wage and/or overtime pay provisions of FLSA.

As a member of my staff discussed in a telephone conversation with you, although FLSA provides many beneficial labor standards, there is nothing in the law which requires an employer to pay for time employees do not work due to illness or injury. Such matters are, generally, for private agreement between an employer and the employee in question or the employee's authorized representative. You mention that the Department restricts certain activities of individuals not working due to illness or injury. For example, employees may leave their place of confinement, with permission, for such reasons as church attendance, medical appointments, physical exercise and other activities listed in your letter. Section 785.16 of Interpretative Bulletin, 29 CFR Part 785 discusses the subject of off duty time. This section makes clear that periods of time during which an employee is completely relieved from duty and which are long enough to enable the employee to use the time effectively for personal purposes are not hours worked under FLSA.

It is our opinion, based on the information you provide, that the conditions placed on the activities of those employees not working due to accident or injury are not so restrictive that the time spent recuperating would be considered hours worked. Thus, the time is not compensable under FLSA and any pay for such time is for private agreement between the parties involved.

Sincerely,

Paula V. Smith
Administrator