



**U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division**

Fact Sheet #53 – The Health Care Industry and Hours Worked

The Fair Labor Standards Act (FLSA) requires covered employers to pay employees at least the federal minimum wage of \$5.15 per hour for all hours worked and overtime pay for hours worked over 40 in a workweek. The FLSA is administered by the Wage and Hour Division of the U.S. Department of Labor.

Hospitals and other institutions “primarily engaged in the care of the sick, the aged, or the mentally ill” are covered employers under Section 3(s)(1)(B) of the FLSA. Thus, hospitals, residential care establishments, skilled nursing facilities, nursing facilities, assisted living facilities, residential care facilities and intermediate care facilities for mental retardation and developmentally disabled must comply with the minimum wage, overtime and youth employment requirements of the FLSA.

Summary

This fact sheet provides guidance regarding common FLSA violations found by the Wage and Hour Division during investigations in the health care industry relating to the failure to pay employees for all hours worked. Nonexempt employees must be paid for all hours worked in a workweek. In general, “hours worked” includes all time an employee must be on duty, on the employer premises, or at any other prescribed place of work. Also included is any additional time the employee is “suffered or permitted” to work. The FLSA requires employers to pay for hours actually worked, but there is no requirement for payment of holidays, vacation, sick or personal time.

The failure to properly count and pay for all hours that an employee works may result in a minimum wage violation if the employee’s hourly rate falls below the required federal minimum wage when his or her total compensation is divided by all hours worked. More likely, the failure to count all hours worked will result in an overtime violation because employers have not fully accounted for hours worked in excess of 40 during the workweek.

Rounding Hours Worked

Some employers track employee hours worked in 15 minute increments, and the FLSA allows an employer to round employee time to the nearest quarter hour. However, an employer may violate the FLSA minimum wage and overtime pay requirements if the employer always rounds down. Employee time from 1 to 7 minutes may be rounded down, and thus not counted as hours worked, but employee time from 8 to 14 minutes must be rounded up and counted as a quarter hour of work time. See *Regulations 29 CFR 785.48(b)*.

Example:

An intermediate care facility docks employees by a full quarter hour (15 minutes) when they start work more than seven minutes after the start of their scheduled shift. Does this practice comply with the FLSA requirements? Yes, as long as the employees’ time is rounded up a full quarter hour when the employee starts working from 8 to 14 minutes before their shift or if the employee works from 8 to 14 minutes beyond the scheduled end of their shift.

Example:

An employee’s schedule is 7 a.m. to 3:30 p.m. with a thirty minute unpaid lunch break. The employee receives overtime compensation after 40 hours in a workweek. The employee clocks

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in 10 minutes early every day and clocks out 7 minutes late each day. The employer follows the standard rounding rules. Is the employee entitled to overtime compensation? Yes. If the employer rounds back a quarter hour each morning to 6:45 a.m. and rounds back each evening to 3:30 p.m., the employee will show a total of 41.25 hours worked during that workweek. The employee will be entitled to additional overtime compensation for the 1.25 hours over 40.

Example:

An employer only records and pays for time if employees work in full 15 minute increments. An employee paid \$10 per hour is scheduled to work 8 hours a day Monday through Friday, for a total of 40 hours a week. The employee always clocks out 12 minutes after the end of her shift. The employee is paid \$400 per week. Does this comply with the FLSA? No, the employer has violated the overtime requirements. The employee worked an hour each week (12 minutes times 5) that was not compensated. The employer has not violated the minimum wage requirement because the employee was paid \$9.75 per hour (\$400 divided by 41 hours). However, the employer owes the employee for one hour of overtime each week.

Travel Time

Time spent by an employee in travel as part of his principal activity, such as travel from jobsite to jobsite during the workday, must be considered as hours worked. An employee who travels from home before the regular workday and returns home at the end of the workday is engaged in ordinary home-to-work travel. This is not considered hours worked. See *Regulations 29 CFR 785.33*.

Example:

A licensed practical nurse (LPN) works at an assisted living facility which has a “sister facility” 20 miles away. There have been times that the LPN has been asked to fill in for someone at the other facility after she completes her shift at her normal work site. It takes her 30 minutes to drive to the other facility. The travel time is not recorded on her time sheet. Is this a violation of the FLSA? Yes. The travel time must be considered part of the hours worked.

Training and Seminars

Attendance at lectures, meetings, training programs and similar activities are viewed as working time ***unless all of the following criteria are met:***

- Attendance is outside of the employee’s regular working hours;
- Attendance is in fact voluntary;
- The course, lecture, or meeting is not directly related to the employee’s job; and
- The employee does not perform any productive work during such attendance.

See *Regulations 29 CFR 785.27*.

Example:

A residential care facility offers specialized training on caring for Alzheimer residents. There are two workshops: one in the evening for the day shift and one during the day for the evening shift. All employees are required to attend. Is this compensable time? Yes, because the training is not voluntary and is related to the employees’ jobs.

Example:

The administrator of a nursing home says specialized patient care training is voluntary, but the nursing supervisors expect all employees on their units to attend and schedule times for each employee to go. Is the time considered hours worked? Yes, the time would be considered hours worked. When the nursing supervisors expect all unit employees to attend and schedule their times, it is not truly voluntary.

Example:

The dishwasher decides to go to the Alzheimer's training session after his shift. Must the administrator pay for the dishwasher's time spent at the training session? No, because all four criteria above are met. It is not considered hours worked.

Example:

The administrator provides a Tai Chi course to residents and allows employees to attend during their off-duty hours. Do employees have to be paid for the time they attend this course? No, the employees do not have to be paid because attendance is voluntary and the other three criteria are met.

Meal Breaks

Bona-fide meal periods (typically 30 minutes or more) are not work time, and an employer does not have to pay for them. However, the employees must be completely relieved from duty. When choosing to automatically deduct 30-minutes per shift, the employer must ensure that the employees are receiving the full meal break. *See Regulations 29 CFR 785.19.*

Example:

A skilled nursing facility automatically deducts one-half hour for meal breaks each shift. Upon hiring, the employer notifies employees of the policy and of their responsibility to take a meal break. Does this practice comply with the FLSA? Yes, but the employer is still responsible for ensuring that the employees take the 30-minute meal break without interruption.

Example:

An hourly paid registered nurse works at a nursing home which allows a 30-minute meal break. Residents frequently interrupt her meal break with requests for assistance. Must she be paid for these frequently interrupted meal breaks? Yes, if employees' meals are interrupted to the extent that meal period is predominately for the benefit of the employer, the employees should be paid for the full 30-minutes.

Other Breaks

Rest periods of short duration, generally running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as work time. It is immaterial with respect to compensability of such breaks whether the employee drinks coffee, smokes, goes to the rest room, etc. *See Regulations 29 CFR 785.18.*

Example:

Many third shift nursing home employees who smoke prefer to take three ten-minute unpaid smoke breaks instead of their 30-minute unpaid meal break. Is it okay for them to substitute the smoke breaks for their meal break? No, the employee must be compensated for the smoke breaks.

On-Call Time

An employee who is required to remain on call on the employer's premises or so close to the premises that the employee cannot use the time effectively for his or her own purpose is considered working while on-call. An employee who is required to carry a cell phone, or a beeper, or who is allowed to leave a message where he or she can be reached is not working (in most cases) while on-call. Additional constraints on the employee's freedom could require this time to be compensated. *See Regulations 29 CFR 785.17.*

Example:

An assisted living facility has four LPN wellness coordinators who are paid hourly. They rotate being on-call each week. They are required to carry a cell phone and be within 45 minutes of the facility when they are on-call. They are not paid for all time spent carrying the cell phone but are paid for time spent responding to calls and time when they have returned to work at the assisted living facility. Does this comply with the FLSA? Yes.

Unauthorized Hours Worked

Employees must be paid for work "suffered or permitted" by the employer even if the employer does not specifically authorize the work. If the employer knows or has reason to believe that the employee is continuing to work, the time is considered hours worked. *See Regulation 29 CFR 785.11.*

Example:

A residential care facility pays its nurses an hourly rate. Sometimes the residential care facility is short staffed and the nurses stay beyond their scheduled shift to work on patients' charts. This results in the nurses working overtime. The director of nursing knows additional time is being worked, but believes no overtime is due because the nurses did not obtain prior authorization to work the additional hours as required by company policy. Is this correct? No. The nurses must be paid time-and-one-half for all FLSA overtime hours worked.

Example:

An hourly paid office clerk is working on a skilled nursing home's quarterly budget reports. Rather than stay late in the office, she takes work home and finishes the work in the evening. She does not record the hours she works at home. The office manager knows the clerk is working at home, but since she does not ask for pay, assumes she is doing it "on her own." Should the clerk's time working at home be counted? Yes. The clerk was "suffered and permitted" to work, so her time must be considered hours worked even though she worked at home and the time was unscheduled. *See Regulations 29 CFR 785.12.*

Additional Information

For more information regarding the Fair Labor Standards Act, visit the Wage and Hour Division web site at www.wagehour.dol.gov or call our toll-free help line, available 8 a.m. to 5 p.m. in your time zone, at 1-866-4US-WAGE (1-866-487-9243). The FLSA statute appears at 29 U.S.C. § 201 *et seq.* The federal regulations regarding hours worked appear in 29 C.F.R. Part 785.

When the state laws differ from the federal FLSA an employer must comply with the higher standard. Links to your state labor department can be found at www.dol.gov/esa/contacts/state_of.htm

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