

October 16, 2009

Marcia S. Adams
Executive Director
South Carolina Dept. of Motor Vehicles
P.O. Box 1498
Blythewood, South Carolina 29016

RE: Legal Opinion re: Fair Labor Standards Act (FLSA) and "Saturday CSRs"

Dear Marcia:

As you know, the South Carolina Department of Motor Vehicles (SCDMV) is planning to employ personnel as "custom service representatives" (CSRs) that will work in one location during the regular week (Monday through Friday) and, every other Saturday, will work in another assigned location.

As you also know, these job duties are currently characteristic of "non-exempt" work as defined by the Fair Labor Standards Act (FLSA). The primary issue concerning SCDMV appears to be whether the time a "Saturday CSR" takes to commute from his home to his Saturday assignment is "compensable" travel time.

As discussed below, our research indicates that a Saturday CSR's travel time from his home to his Saturday work assignment, and travel time at the end of the Saturday assignment to his home, is not compensable.

Generally, normal travel to work from home, and returning to home at the day's end, is not "compensable" time for non-exempt employees. 29 CFR § 785.35. The regulation specifically states that this "is true whether he works at a fixed location or at different job sites." (emphasis added). However, there are instances where travel time to and from home is compensable:

- When an employee who regularly works at a fixed location in one city is given a special 1-day work assignment in another city, travels there directly from his home. 29 CFR § 785.37.
- When the employee is required to report to a specific place to receive instructions, pick up tools, etc., and travel from the designated place to the workplace. 29 CFR § 785.38

- When the employee is actually required to perform work while traveling. 29 CFR § 785.41.

There are two cases that appear to support our conclusion that the Saturday CSR's commuting time to and from work is not compensable. *Spencer v. Office of the Auditor of Public Accounts*, 1990 WL 8034 (E.D.Ky. 1990), *aff'd*, 928 F.2d 405 (6th Cir. 1991) (table), involved a state auditor who traveled from his home to various county offices around Kentucky to conduct his audits. Spencer sued the state alleging that the time he spent traveling to and from his assigned work stations was compensable under the FLSA. The District Court rejected his claim, finding:

In the case at bar, it appears that the plaintiff was not required to work at more than one location on any given day. This condition, along with the fact that the plaintiff was not required to report to a central location for instructions or equipment before departing to the remote location, arguably distinguishes this case from the exception recognized by the Tenth Circuit and the Department of Labor.

1990 WL 8034, at *6. In affirming the District Court, the Sixth Circuit was more direct:

Plaintiff's primary argument is that his travel time is integral and indispensable to his job. No extraordinary facts are urged in support of this argument; he simply drives from the Frankfort vicinity to the place where an audit is to be done...

Plaintiff's arguments fail on the facts of his situation. As the "integral and indispensable" cases make clear, more is required of travel time than the moving of the employee from one place to another. Plaintiff does not allege that he moves special necessary equipment; his argument is that because he cannot do the audit until he has travelled to the audit place, the travel is compensable. The district court was correct in its holding that plaintiff's travel is not "integral and indispensable" to his job, and we affirm on this point.

928 F.2d 405, at *3.

Similarly, in *Imada v. City of Hercules*, 138 F.3d 1294 (9th Cir. 1998), the Ninth Circuit addressed whether the "special 1-day work assignment in another city" rule described in 29 CFR § 785.37 applies to a city police officer who is ordered to travel outside the city to annual training. The officer claimed that, because the training only occurred a few times a year, it could not be "ordinary travel from home to work." In rejecting the claim, the court stated that the training was not "special" or "unusual," but was instead "a normal, contemplated and indeed mandated incident of their employment." *Id.* at 1297. The court also ruled that there was no requirement that travel must occur frequently in order to be "normal" or "ordinary." *Id.* As such,

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the "special 1-day work assignment" exception described in 29 CFR § 785.37 did not apply, and the time was not compensable.

For these reasons, it appears that a Saturday CSR's "commuting" travel time to and from his Saturday work assignment is not compensable.

Please contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene", written in a cursive style.

Eugene H. Matthews

cc: Val Valenta, General Counsel
Dottie Blankenship, HR Director