

Wage and Hour Division, Labor

§ 785.50

minutes duration, and where the failure to count such time is due to considerations justified by industrial realities. An employer may not arbitrarily fail to count as hours worked any part, however small, of the employee's fixed or regular working time or practically ascertainable period of time he is regularly required to spend on duties assigned to him. See *Glenn L. Martin Nebraska Co. v. Culklin*, 197 F. 2d 981, 987 (C.A. 8, 1952), cert. denied, 344 U.S. 866 (1952), rehearing denied, 344 U.S. 888 (1952), holding that working time amounting to \$1 of additional compensation a week is "not a trivial matter to a workingman," and was not de minimis; *Addison v. Huron Stevedoring Corp.*, 204 F. 2d 88, 95 (C.A. 2, 1953), cert. denied 346 U.S. 877, holding that "To disregard workweeks for which less than a dollar is due will produce capricious and unfair results." *Hawkins v. E. I. du Pont de Nemours & Co.*, 12 W.H. Cases 448, 27 Labor Cases, para. 69,094 (E.D. Va., 1955), holding that 10 minutes a day is not de minimis.

§ 785.48 Use of time clocks.

(a) *Differences between clock records and actual hours worked.* Time clocks are not required. In those cases where time clocks are used, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late clock punching may be disregarded. Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

(b) *"Rounding" practices.* It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work. For enforcement purposes this practice of computing working time will be ac-

cepted, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

Subpart E—Miscellaneous Provisions

§ 785.49 Applicable provisions of the Fair Labor Standards Act.

(a) *Section 6.* Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) requires that each employee, not specifically exempted, who is engaged in commerce, or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce, or in the production of goods for commerce receive a specified minimum wage.

(b) *Section 7.* Section 7(a) of the Act (29 U.S.C. 207) provides that persons may not be employed for more than a stated number of hours a week without receiving at least one and one-half times their regular rate of pay for the overtime hours.

(c) *Section 3(g).* Section 3(g) of this act provides that: " 'Employ' includes to suffer or permit to work."

(d) *Section 3(o).* Section 3(o) of this act provides that: "Hours worked—in determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from the measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employees."

[26 FR 190, Jan. 11, 1961, as amended at 26 FR 7732, Aug. 18, 1961]

§ 785.50 Section 4 of the Portal-to-Portal Act.

Section 4 of this Act provides that:

(a) Except as provided in paragraph (b), of this section, no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Davis-Bacon Act, on account of the failure of such employer to pay an employee minimum wages, or

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to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in, on, or after May 14, 1947:

(1) Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) Activities which are preliminary to or postliminary to said principal activity or activities, which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday which he ceases, such principal activity or activities.

(b) Notwithstanding the provisions of paragraph (a) of this section which relieve an employer from liability and punishment with respect to an activity the employer shall not be so relieved if such activity is compensable by either:

(1) An express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) A custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

(c) For the purposes of paragraph (b) of this section, an activity shall be considered as compensable, under such contract provision or such custom or practice only when it is engaged in during the portion of the day with respect to which it is so made compensable.

(d) In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, of the Walsh-Healey Act, or of the Davis-Bacon Act, in determining the time for which an employer employs an employee with respect to walking, riding, traveling, or other preliminary or postliminary activities described in paragraph (a) of this section, there

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shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of paragraphs (b) and (c) of this section.

PART 786—MISCELLANEOUS EXEMPTIONS

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AUTHORITY: 52 Stat. 1060, as amended; 29 U.S.C. 201-219.

Subpart A—Carriers by Air

§ 786.1 Enforcement policy concerning performance of nonexempt work.

The Division has taken the position that the exemption provided by section 13(b)(3) of the Fair Labor Standards Act of 1938, as amended, will be deemed applicable even though some nonexempt work (that is, work of a nature other than that which characterizes the exemption) is performed by the employee during the workweek, unless the amount of such nonexempt work is substantial. For enforcement purposes, the amount of nonexempt work will be considered substantial if it occupies more than 20 percent of the time worked by the employed during the workweek.

[21 FR 5056, July 7, 1956]