

Minimum Wage Opinion Letter **06-04-02 - Meetings and the Three-Hour Rule**

June 4, 2002

I am writing in response to your request for this Office's written opinion regarding the applicability of 455 C.M.R. §2.03(1)(a) (the "three-hour rule") - what you refer to in your letter as the "reporting pay requirement" - to three specific situations. [1] The regulation in question, 455 C.M.R. §2.03(1)(a) provides:

[a]n employee who, by request or permission of the employer reports for duty on any date at the time set by the employer, regardless of whether actual work is assigned, shall be paid for at least three hours on such day at no less than the basic minimum wage. This provision shall not apply to organizations granted status as charitable organizations under the Internal Revenue Code.

I will deal with each situation in turn and will presume that the employer is a for-profit company.

1.) Must an employer follow the reporting pay requirement when it requires an employee to come to the worksite on his or her regular day off (or outside of his or her regular work hours) in order to be interviewed relating to a workplace issue?

The Division of Occupational Safety (DOS) interprets this provision as one applying to employees whose scheduled hours of work are curtailed by their employer due to lack of work. For example, employees who are scheduled to work three hours or more, who arrive at the worksite at the time appointed by the employer only to find that their employer has so little work for them to perform that he requires less than three hours of their labor, cannot be paid for less than three hours at the minimum wage. Therefore, assuming that the employee does not expect the interview to last three hours or more, the employer may pay the employee for only the hours worked. [2] However, if, for example, the employee is told that the interview will take four hours, and the employee is sent home after two hours, the employee must be paid for two hours at the applicable rate, and 455 C.M.R. §2.03(1)(a) would require that the employee be paid for the third hour at no less than minimum wage.

[3]

2.) Must an employer follow the reporting pay requirement when it requires an employee to come to the worksite or another location on his or her regular day off (or outside of his or her regular work hours) to attend a work-related meeting?

The answer is the same as for 1.) above.

3.) Does the reporting pay requirement apply to only non-exempt employees? If not, how does the reporting pay requirement apply to exempt employees, i.e., is the employee entitled to three hours of pay at the minimum wage rate in each of the scenarios described in (1) and (2) above? [4]

Nothing in the regulation provides for an exception for salaried, "exempt" employees, except for those employed in charitable organizations. Therefore, if such an employee is called in for a two-hour interview or meeting (outside of his or her regular hours for which his/her salary is intended to compensate), this time is hours worked for which the employee must be paid. The employer may compensate the employee for only the two hours worked. However, if this employee is told that the interview or meeting will take three or more hours, and the employee is sent home after two hours, the employee must be paid for two hours at the applicable rate, and 455 C.M.R. §2.03(1)(a) would require that the employee be paid for the third hour at no less than minimum wage.

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,
Lisa C. Price
Legal Counsel

[1] Please note that employers are also subject to the federal minimum wage and hour law, found in the Fair Labor Standards Act (FLSA), and regulations promulgated thereunder. For information about applicable federal wage and hour laws, you should contact the U.S. Department of Labor. The telephone number for the Boston Office is (617) 624-6700.

[2] Of course, if this interview time causes a non-exempt employee's hours to exceed 40 hours in that workweek, the employee must be paid time and one-half for all hours worked in excess of 40 hours.

[3] In this instance, the first two hours would be included in the calculation of total hours worked for purposes of overtime calculation. The third hour would not be included in the overtime calculation as this hour does not constitute an hour of work. See 455 C.M.R. §2.02(4).

[4] I am assuming you are referring to an employee who is exempt from overtime, not from minimum wage, and that your main concern is that this employee is paid on a salaried basis rather than on an hourly basis.

= Names have been Omitted