

Minimum Wage Opinion Letter 05-06-02 - On-Call Time and the Three-Hour Rule

May 6, 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") to a specific on-call situation. [\[1\]](#)

As I understand it, your company employs HVAC technicians who regularly work Monday through Friday from 7:30 a.m. to 4:30 p.m. and also on a rotating on-call basis. Regarding the latter, technicians carry a beeper for a one-week shift, every six weeks, to cover evening and weekend service calls. While on call, a technician may be called in for a repair job that only takes one hour to complete. Your question is does the company need to pay that employee for three hours pursuant to 455 C.M.R. §2.03(1)(a) or can it pay for only the hour worked? [\[2\]](#)

The regulation in question, 455 C.M.R. §2.03(1)(a) provides, in pertinent part:

[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.

The Division of Occupational Safety (DOS) does not interpret this provision to prevent an employer and employee from reaching an agreement that an employee's regular hours will consist of fewer than three hours, compensated on an hour-for-hour basis. Rather, DOS interprets this provision as one applying to employees whose regularly-scheduled hours of work are curtailed by their employer due to lack of work. See [mw-2000-006](#), dated October 13, 2000.

In the situation you described, the employee's regular schedule includes an agreement to work on an on-call basis, once every six weeks, which entails coming in for shorter, on-call jobs. This is part of this employee's regular schedule, and not a situation where the employee expects to be paid for a regular shift in excess of three hours, but finds his/her hours curtailed due to lack of work. Therefore, in the situation you described, the employer may pay the employee for only the one hour worked. [\[3\]](#) The employee would be paid at either the employee's regular rate of pay or at time and one-half if the employee has worked in excess of 40 hours that workweek.

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.

[\[2\]](#) Your letter states that employees are paid \$50 to carry the beeper, are paid for every hour they work when called in, and, as these hours constitute hours in excess of forty hours per week, they are also paid at time and one-half.

[\[3\]](#) This conclusion assumes that employees who are on-call carrying the beeper are effectively free to use their time for their own purposes.

= Names have been omitted