U.S. Department of Labor Wage and Hour Division
Washington, D.C. 20210

FLSA2026-8

May 28, 2026

Dear **Name***:

This letter responds to your request to the Wage and Hour Division (WHD or Division) for an opinion letter concerning a hospital's timekeeping and compensation practices. Specifically, you ask whether your employer's treatment of pre-shift activities and waiting time, application of the *de minimis* doctrine, and rounding policy comply with the Fair Labor Standards Act (FLSA or Act) and its implementing regulations.

It is our opinion that, based on the information you provided in your request, the hospital's timekeeping and pay practices raise substantial questions as to whether the employer at issue has met its obligation to pay for all compensable "hours worked" under the Act. Under the facts presented, some of the uncompensated pre-shift activities you describe are integral and indispensable to your principal job duties, and therefore compensable. Other pre-shift activities, on the other hand, including waiting in line to clock in and out, are preliminary or postliminary, and thus not compensable hours worked, provided they occur before an employee's first principal activity of the day or after the last principal activity of the day.

To the extent that the employer actually or constructively knows of, and allows employees to perform, compensable work at the hospital on a regular basis before their paid shift begins, such work is unlikely to fall within the *de minimis* doctrine. However, given the breadth of the hospital employees' occupations and principal activities, we are unable to reach definitive conclusions about the amount and regularity of compensable pre-shift work, and therefore unable to assess the applicability of the *de minimis* doctrine. If employees are in fact performing compensable work before their scheduled shift begins, the employer's rounding practice at the beginning of the day is neither facially neutral nor neutrally applied, and therefore may result in minimum wage or overtime violations, because it exclusively benefits the employer by rounding early arrivals to the scheduled shift time. The rounding practice at the end of the day does not appear to affect the proper calculation of hours worked under the FLSA assuming that, as appears to be the case, the employees are not performing any compensable work after the end of their paid shifts.

BACKGROUND

You represent that you are a non-exempt employee of a public hospital that employs approximately 18,000 non-exempt employees. According to your request, employees are given flexibility to clock in up to 7 minutes early to avoid tardiness that might otherwise be caused by bottlenecks at the limited number of timekeeping stations. You further state that the same limitations sometimes cause employees to clock out after the end of their scheduled shifts. In both instances, you represent that the timekeeping system is set up to round these times to the scheduled shift times (*i.e.*, rounding a 6:53 a.m. clock-in up to 7:00 a.m. and rounding a 7:07 p.m. clock-out down to 7:00 p.m.).[1] You state that non-exempt employees, including respiratory therapists, routinely

[1] Your request does not state whether, in the event of a later clock-out, the timekeeping systems rounds to

engage in pre-shift work activities immediately after clocking in—even when they clock in early. You represent that these pre-shift activities are integral to employees' principal job duties and that the hospital is administratively capable of capturing the time using its existing timekeeping system. Nevertheless, you indicate that the hospital does not compensate employees for the pre-shift work.

You request an opinion letter answering the following questions:

1. Is pre-shift work (*e.g.*, equipment preparation, chart review) performed after clocking in compensable under the FLSA, given its regular and integral nature?

2. Does time spent waiting due to timekeeping station bottlenecks constitute compensable work time, particularly when followed by immediate work duties?

3. May the hospital invoke the *de minimis* doctrine to exclude daily, predictable time losses of up to 7 minutes per employee, considering the significant aggregate impact?

4. Does the hospital's policy—rounding early clock-ins at the start of a shift while prohibiting early clock-outs—comply with the requirements for neutral rounding practices under 29 C.F.R. § 785.48(b)?

GENERAL LEGAL PRINCIPLES

A. The Fair Labor Standards Act

The FLSA requires covered employers to pay all non-exempt employees at least the federal minimum wage for all hours worked. 29 U.S.C. § 206. In addition, the Act requires payment "at a rate not less than one and one-half times the regular rate at which [the employee] is employed" to all non-exempt employees for all hours worked in excess of 40 hours in a workweek. *Id.* § 207(a)(1). The amount of wages an employee is entitled to receive in any workweek cannot be determined without knowing the number of hours worked. 29 C.F.R. § 785.1.

The Act defines the term "employ" to include "to suffer or permit to work." 29 U.S.C. § 203(g). Thus, work not expressly assigned, requested, or required, but which is suffered or permitted, is compensable work time. 29 C.F.R. § 785.11; *see, e.g.*, *Craig v. Bridges Bros. Trucking LLC*, 823 F.3d 382, 388 (6th Cir. 2016). As a result, an employer must pay for all compensable work that it knows or has reason to know is being performed. *See, e.g.*, *Von Friewalde v. Boeing Aerospace Operations, Inc.*, 339 F. App'x 448, 455 (5th Cir. 2009) (citing *Newton v. City of Henderson*, 47 F.3d 746, 748 (5th Cir. 1995)); *Holzapfel v. Town of Newburgh, N.Y.*, 145 F.3d 516, 524 (2d Cir. 1998); 29 C.F.R. §§ 785.11–.12; WHD Opinion Letter FLSA 2009-15 (January 15, 2009); WHD Opinion Letter, 1989 WL 1636464 (June 13, 1989); WHD Opinion Letter, 1985 WL 1087351, at *2 (Dec. 30, 1985).

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the nearest quarter-hour (*i.e.*, if you do not clock out until 7:08 p.m., whether the timekeeping system would round up to 7:15 p.m.).

B. Pre-Shift and Post-Shift Activities Under the Portal-to-Portal Act

In a series of cases between 1944 and 1946, the Supreme Court held that the FLSA required employers to compensate employees for "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace," including certain preparatory and concluding activities that the Court had determined constituted work, such as travel in underground mine trains and walking time from a plant's time clocks to employees' workstations. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 690–92 (1946); *see Jewell Ridge Coal Corp. v. Local No. 6167, United Mine Workers of Am.*, 325 U.S. 161, 170 (1945); *Tenn. Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 599 (1944). In response, in 1947, Congress enacted the Portal-to-Portal Act, which amended the FLSA to clarify that it does not require employers to compensate employees for:

> (1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which [an] employee is employed to perform, and
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> (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 at which he ceases, such principal activity or activities.

Pub. L. No. 80-49, 61 Stat. 84, 86–87 (May 14, 1947), 29 U.S.C. § 254(a); *see IBP, Inc. v. Alvarez*, 546 U.S. 21, 25–26 (2005). An employee's principal activities include all activities that are "integral and indispensable to the principal activities that an employee is employed to perform," meaning they are an "intrinsic element of those activities . . . with which the employee cannot dispense if he is to perform his principal activities." *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27, 33 (2014).

Compensable activities that are integral and indispensable may include donning and doffing required protective gear, performing mandatory equipment checks such as sharpening knives and oiling or cleaning machines before use, and booting up and logging into computer systems required to begin work. *See, e.g.*, *Alvarez*, 546 U.S. at 32; *Steiner v. Mitchell*, 350 U.S. 247, 256 (1956); *Mitchell v. King Packing Co.*, 350 U.S. 260, 262–63 (1956); *Peterson v. Nelnet Diversified Sols., LLC*, 15 F.4th 1033, 1041 (10th Cir. 2021); 29 C.F.R. § 790.8(b). Conversely, time spent waiting to clock in, walking from a time clock to a workstation, changing clothes where doing so is merely for the employee's convenience, and other pre- or post-shift activities not integral and indispensable to an employee's principal activities are not compensable if they occur before or after an employee's first or last principal activities, respectively. *See* 29 C.F.R. § 790.8(c) *Integrity Staffing Sols.*, 574 U.S. at 35 (pre-shift security screenings of warehouse workers were not integral or indispensable where the employer "could have eliminated the screenings altogether without impairing the employees' ability to complete their work"); *Alvarez*, 546 U.S. at 40–41 (although the time poultry workers spent donning protective uniforms was integral and indispensable, the time they spent waiting in line before donning the uniforms was not); *Bamonte v. City of Mesa*, 598 F.3d 1217, 1225–26 (9th Cir. 2010) (police officers' donning of uniforms at their workplace was not integral and indispensable to their principal activities where they were

permitted to put on those uniforms at home and did so at the workplace for reasons related to their own benefit); *see also* Wage & Hour Advisory Mem. No. 2006-2 (May 31, 2006) (articulating Division's "longstanding position that if employees have the option and the ability to change into the required gear at home, changing into that gear is not a principal activity, even when it takes place at the plant").

C. The *De Minimis* Doctrine

Under the FLSA, employers must pay employees for all hours they work. 29 C.F.R. § 785.1. In recording working time under the Act, however, "insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded." 29 C.F.R. § 785.47. The Supreme Court has held that such trifles are *de minimis*. *Anderson,* 328 U.S. at 692 ("When the matter in issue concerns only a few seconds or minutes of work beyond the scheduled working hours, such trifles may be disregarded."). The *de minimis* doctrine "applies only where there are uncertain and indefinite periods of time involved of a few seconds or minutes duration, and where the failure to count such time is due to considerations justified by industrial realities." 29 C.F.R. § 785.47.

Whether time is *de minimis* is a fact-specific analysis, considering the practical administrative difficulty of recording the time, the aggregate amount of compensable time involved, and the regularity with which the work occurs. *Mazurek v. Metalcraft of Mayville, Inc*., 110 F.4th 938, 946 (7th Cir. 2024); *Cadena v. Customer Connexx LLC*, 107 F.4th 902, 909 (9th Cir. 2024); *Tyger v. Precision Drilling Corp.*, 78 F.4th 587, 594 (3rd Cir. 2023); *De Asencio v. Tyson Foods, Inc.*, 500 F.3d 361, 374 (3d Cir. 2007); *Reich v. New York City Transit Authority*, 45 F.3d 646, 652 (2d Cir. 1995); *Lindow v. United States*, 738 F.2d 1057, 1062–64 (9th Cir. 1984) ("There is no precise amount of time that may be denied compensation as *de minimis.* No rigid rule can be applied with mathematical certainty."). If a small amount of work is performed only sporadically or irregularly, it may be *de minimis*. *Lindow*, 738 F.2d at 1063–64 (finding that irregular performance of small amounts of otherwise compensable work off the clock supported *de minimis* treatment). Conversely, if the work at issue occurs regularly, then the employer typically cannot escape liability for paying its employees for this time by relying on the *de minimis* exception. *See* 29 C.F.R. § 785.47 ("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.").

D. Rounding Practices and Aggregate Impact

The Department's regulations explain that employers may practice time rounding, but only under specific conditions. Under 29 C.F.R. § 785.48, employers may round employee time to the nearest fraction of an hour (such as the nearest 5 minutes, 6 minutes, or quarter-hour). This practice, however, is only acceptable if it "will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked." 29 C.F.R. § 785.48(b). This means a rounding practice must both be neutral on its face and average out over time so it does not consistently favor the employer. *See Corbin v. Time Warner Entertainment-Advance/Newhouse Partnership*, 821 F.3d 1069, 1075–79 (9th Cir. 2016) (concluding that an employer's rounding practices comply with 29 C.F.R. § 785.48(b) if the rounding policy is facially neutral and averages out such that it does not systematically undercompensate employees); *Houston v. Saint Luke's*

Health Sys., Inc., 76 F.4th 1145, 1150 (8th Cir. 2023); *Aguilar v. Mgm't Training Corp.*, 948 F.3d 1270, 1287–88 (10th Cir. 2020).

When evaluating rounding practices to apply these principles, courts examine the aggregate impact over a period of time. While fluctuation from pay period to pay period is to be expected, a neutral rounding practice must "average out in the long term." *Corbin*, 821 F.3d at 1077. For example, an employer's rounding practices were found to be permissible where the pay records showed that "sometimes [the employee] gained minutes and compensation, and sometimes [the employee] lost minutes and compensation," and the net difference between hours worked and hours compensated amounted to only 3 minutes and $15 over about a year. *Id.* at 1079. In contrast, an appeals court reversed a lower court's conclusion that an employer's practice was neutrally applied when evidence showed that its practices cost roughly 13,000 employees approximately 74,000 hours of uncompensated time over a 6-year period. *Houston*, 76 F.4th at 1152. Similarly, another court found an employer's rounding policy was likely not neutrally applied when evidence showed that it favored the employer 94 percent of the time. *Aguilar*, 948 F.3d at 1288.

OPINION

You pose four questions concerning the compensability of certain pre-shift activities and permissible rounding practices under the FLSA. For present purposes, we understand that the employees at issue are non-exempt and subject to the minimum wage and overtime requirements of sections 6 and 7 of the Act, and we assume that the facts presented in your request accurately describe the hospital's policies and practices.

A. Compensability of Pre-Shift Activities and Time Spent Waiting at Timekeeping Stations

Is pre-shift work (e.g., equipment preparation, chart review) performed after clocking in compensable under the FLSA, given its regular and integral nature?

Does time spent waiting due to timekeeping station bottlenecks constitute compensable work time, particularly when followed by immediate work duties?

You describe various activities that you say employees perform before their paid shifts begin, including locating work assignments, completing accountability documentation, assigning employees to work locations via communication devices, and receiving handoff reports from colleagues. Based on the information provided, at least some of these activities appear to be integral and indispensable to the employees' principal job duties, and are therefore compensable hours worked. For example, for respiratory therapists—some of the workers at issue—receiving handoff reports regarding patient status is essential because a respiratory therapist cannot safely begin patient care without understanding each patient's current medical condition, ongoing treatments, and any changes that occurred during the prior shift. Similarly, for such workers, locating work assignments is necessary because respiratory therapists must know which patients they are responsible for before they can perform any treatment duties. These activities are compensable because they are intrinsically related to the employees' principal job duties and cannot be dispensed with if the employees do not perform them.

You also mention various other administrative activities that employees perform before their paid shifts begin. As explained above, the determination of whether pre-shift activities are compensable under the Act turns on whether time spent on those activities is integral and indispensable to the principal activities the employee is employed to perform. *See Integrity Staffing*, 574 U.S. at 32–33; *Steiner*, 350 U.S. at 256. This determination is fact-specific and depends on both the activities at issue and the principal job duties of the employees at issue, and an activity that may be "preliminary" or "postliminary" in one context may be "integral and indispensable" in another. 29 C.F.R. § 790.7(h). We are thus unable to draw broad conclusions about the compensability of such administrative activities for all 18,000 hospital employees.

On the other hand, time spent waiting in line to clock in and out is not compensable. As a general rule, time spent clocking in and out—and waiting in line to do so—before the first principal activity and after the last principal activity is not compensable because it is not integral and indispensable to the job an employee is hired to perform for purposes of the FLSA. 29 C.F.R. § 790.8(c) ("[A]ctivities such as checking in and out and waiting in line to do so would not ordinarily be regarded as integral parts of the principal activity or activities."); *Alvarez*, 546 U.S. at 40–42 (holding that time spent waiting to don protective gear was "two steps removed from the productive activity" the employee was hired to perform and is not compensable).[2] This principle applies even when such waiting occurs on the employer's premises. *See Integrity Staffing*, 574 U.S. at 37 (holding that employees' time spent waiting to undergo security screenings was not compensable); *Alvarez*, 546 U.S. at 41.

B. Applicability of the *De Minimis* Doctrine

May the hospital invoke the de minimis doctrine to exclude daily, predictable time losses of up to 7 minutes per employee, considering the significant aggregate impact?

You represent that employees clock in up to 7 minutes before their shift starts but are not compensated for that time even if they do compensable work because the hospital claims the time is *de minimis*. As noted above, an evaluation of whether time is *de minimis* under the FLSA considers the practical administrative difficulty of recording the time, the total amount of compensable time involved, and the regularity with which the work occurs. *See supra* at 4.

To the extent that each day, employees are performing compensable work prior to their paid shifts commencing, such work is unlikely to be *de minimis*. In general, as noted above, "[a]n employer may not arbitrarily fail to count as hours worked any part, however small, of the employee's fixed

[2] This general principle applies only to time before or after the workday, that is, before an employee performs the first principal activity of the day and after an employee performs the last principal activity of the day. In contrast, waiting time during the workday is generally compensable unless an employee is completely relieved from duty and the time is long enough for the employee to use effectively for the employee's own purposes. *See Alvarez*, 546 U.S. at 40–42 (concluding that the time workers spent waiting in line to don protective gear was a non-compensable preliminary activity, but that time the workers waited in line to doff the gear was compensable, because the donning and doffing constituted the first and last principal activities of the day, respectively, placing the pre-donning waiting time outside the workday but the pre-doffing waiting time within the workday); *Bridges v. Empire Scaffold, L.L.C.*, 875 F.3d 222, 228 (5th Cir. 2017) (distinguishing between pre-shift and intra-shift waiting time); 29 C.F.R. §§ 785.14–17.

or regular working time." 29 C.F.R. § 785.47; *see Aguilar*, 948 F.3d at 1284; WHD Opinion Letter FLSA-843 (Nov. 7, 1994) ("[W]here an employer arbitrarily fails to pay an employee for any part of the employee's fixed or regular working time, however small, this would be considered a violation of the FLSA."); WHD Opinion Letter WH-375, 1976 WL 41727 (Mar. 1, 1976); WHD Opinion Letter FLSA2004-8NA (Aug. 12, 2004) ("Where an employer fails to pay an employee for any part of the employee's fixed or regular working time, however small, this would be considered a violation of the FLSA.").

Conversely, to the extent that pre-shift compensable work is irregular, the practical administrative difficulty of recording the time may justify treating it as *de minimis*. Although the employer has a timekeeping system that is capable of documenting the time of arrival and departure, we cannot definitively say, based on the information provided, whether it is administratively feasible for the employer to record the actual time each employee performs their first principal activity—thus beginning their compensable workday—as opposed to engaging in personal activities such as getting coffee, socializing, checking phones, storing personal belongings, or simply waiting for their shift to start. Given, as noted above, the large number of hospital employees and the likely differences between the extent to which they are, or are not, on a consistent basis performing principal activities between clocking in and the formal start to their shift, we are unable to conclude that the time is—or is not—*de minimis*.

Employers, including the hospital at issue here, should nonetheless be particularly careful about how and to what extent they apply the *de minimis* doctrine. Particularly given the technological advances that have made it possible for employers to track employees' work time with increasing precision, employers should expect exacting scrutiny of *de minimis* claims where employees perform off-the-clock work with any degree of regularity. *Accord, e.g.*, *Houston*, 76 F.4th at 1152 (noting, regarding a determination of whether a rounding policy resulted in systematic underpayment, that "with automated, electronic timing and accounting, this is easy to verify because the system records the exact time that an employee clocks in or out. There is no administrative hassle. This is not like the old days of punch cards and hand arithmetic.").

To ensure compliance with the Act and its regulations, and to minimize potential liability, employers like the hospital here should consider proactive steps to implement and enforce clear policies prohibiting employees from performing any work-related activities outside their scheduled shift. 29 C.F.R. § 785.13 ("[I]t is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so."). Though an employer must always pay employees for work that it knows or has reason to know is being performed—even time worked outside of authorized working time—if an employer clearly instructs employees to refrain from beginning work tasks or duties until their shift begins, and that employees who perform work outside their scheduled work time without authorization may face disciplinary action, *and* if the employer enforces such a rule, it may be excused from compensating occasional off-the-clock work done in violation of such policies and without the employer's actual or constructive knowledge. *See White v. Baptist Mem'l Health Care Corp.*, 699 F.3d 869, 873–77 (6th Cir. 2012) (the employer is not liable when the employer communicates a reasonable reporting system to account for uncompensated work time, the employee disregards the process, and the employer is not otherwise notified); *Kellar v. Summit*

Seating Inc., 664 F.3d 169, 178 (7th Cir. 2011) (relieving employer of liability where employee who worked off-the-clock overtime "was acting in direct contradiction of a company policy and practice that she herself was partially responsible for enforcing" and had in fact enforced); *Newton*, 47 F.3d at 749 (no employer liability when employer explicitly communicated prohibition against unauthorized overtime work and the specific procedures for employees to request authorization, and the employee instead performed unauthorized overtime work without following the procedures); *Forrester v. Roth's I.G.A. Foodliner, Inc.*, 646 F.2d 413, 414 (9th Cir. 1981) (employer not liable for unreported overtime where employee knew that overtime was supposed to be reported on time sheets, was paid for all overtime he reported, and testified that had he reported the additional hours that he worked but failed to report, he would have been paid).

C. Rounding Policy Compliance with 29 C.F.R. § 785.48(b)

Does the hospital's policy—rounding early clock-ins at the start of a shift while prohibiting early clock-outs—comply with the requirement for neutral rounding practices under 29 C.F.R. § 785.48(b)?

Based on the facts you provided, the hospital's rounding policy permits employees to clock in up to 7 minutes prior to the scheduled shift start but rounds such early clock-ins forward to the scheduled start time. The policy also prohibits employees from clocking out prior to the scheduled end of the shift. Your description does not indicate whether employees ever benefit from rounding in other circumstances, such as when they arrive late to their shifts. As noted above, the critical question under 29 C.F.R. § 785.48(b) is whether a rounding practice, evaluated over a period of time, is facially neutral and operates neutrally such that it does not systematically undercompensate employees for hours worked.

We note initially that a rounding policy for clock-in and clock-out time only affects the calculation of hours worked to the extent that employees are performing compensable work between the clock-in/out time and the rounded time. As noted above, clocking in or out, by itself, is generally not considered compensable work. Likewise, the time between clocking in and beginning principal activities, and between completing principal activities and clocking out, is also not compensable. *See Bridges*, 875 F.3d at 228 (pre-shift waiting time not compensable where employees performed no principal activities until the shift began). Thus, your employer's rounding policy for clocking in and out implicates section 785.48 and the calculation of an employee's hours worked only if employees are in fact performing principal activities, including any activities integral and indispensable to principal activities, during any time that is lost to rounding. For this reason, we have no basis on which to conclude that your employer's prohibition of early clock-outs constitutes non-neutral rounding under section 785.48 or affects the calculation of hours worked, because none of the information you have provided suggests that employees are performing compensable work—as opposed to merely waiting in line to clock out—after their paid shift ends.

As to the beginning of the day, if employees are, in fact, performing compensable work—such as respiratory therapists receiving handoff reports—after clocking in but before their paid shifts, then based strictly on the information provided, the hospital's rounding policy is not neutral pursuant to 29 C.F.R. § 785.48(b) because it both is not facially neutral and only ever benefits the employer without ever benefiting the employee. According to the facts presented, the employer's only rounding practice is to round early check-ins to the scheduled shift time. As a result, employees

who perform compensable work during the up-to-7-minute early check-in period are always uncompensated for that time and are not afforded a chance for over-compensation to average that time. Accordingly, under these facts, the hospital's rounding practice is inconsistent with section 785.48(b) and would result in a failure to properly record, as well as potentially to properly compensate for, all hours worked.[3] If, however, the hospital's rounding practice is facially neutral and operates such that employees can and actually do benefit from rounding in other circumstances—for example, if employees who clock in up to 7 minutes late are nonetheless credited with starting at their scheduled time *and* that practice averages out over time to offset any work time lost due to the rounding of early check-ins to the scheduled shift time—then the policy would likely comply with section 785.48(b).

This letter is an official interpretation of the governing statutes and regulations by the Administrator of the Wage and Hour Division of the United States Department of Labor for the purposes of the Portal-to-Portal Act. *See* 29 U.S.C. § 259. This interpretation may be relied upon in accordance with section 10 of the Portal-to-Portal Act, notwithstanding that after any such act or omission in the course of such reliance, the interpretation is "modified or rescinded or is determined by judicial authority to be invalid or of no legal effect." *Id.*

We trust that this letter is responsive to your inquiry.

Sincerely,

Andrew B. Rogers
Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(6).** You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for any litigation that commenced prior to your request. This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. The existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein.

[3] Whether such improper recording would create a violation of the FLSA's minimum wage or overtime requirements will depend on whether, after properly accounting for all of an employee's hours worked during a workweek, the employee has not received the statutory minimum wage for all hours worked or has not received overtime pay at one and a half times the employee's regular rate for hours worked in excess of 40 in a workweek.