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Labor Relations: Federal Minimum Wage Does Not Apply To Nurses' On-Call Time.

The US Circuit Court of Appeals for the Eighth Circuit has ruled that nurses' on-call time does not come under the US Fair Labor Standards Act (FLSA).

The court said in plain language that nurses do not have to be paid the Federal minimum wage while on call.

Nurses Are Not Working While On Call

The court's reasoning was that nurses, to be precise the nurses who filed this case, are not working for their employer during their on-call time.

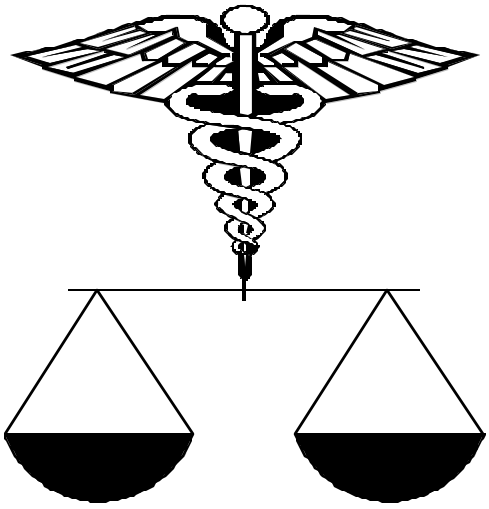
As the courts interpret the FLSA, only the time that an employee spends working for the employer comes under the FLSA.

The court pointed out that the nurses in this case had a great deal of flexibility in their personal activities during their on-call time.

The only requirements for nurses while on call were they had to be reachable by phone, cell phone or pager and able to report to the hospital within twenty minutes if they were called.

They were also required to refrain from using alcohol and mind-altering drugs or medications while on call.

Other than that, the nurses in this case could do basically whatever they wanted while they were on call.



An employee is working when the employee's time is being spent predominately for the benefit of the employer. On the other hand, time spent waiting to be engaged in activity for the benefit of the employer is time when the employee is not working and time for which the employee does not have to be paid the minimum wage.

UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT, 2001.

The court noted the nurses could do any number of things while on call that are usually seen as leisure-time activities, like playing sports, working around the house, visiting friends, shopping, sleeping, etc.

Rarely if ever were nurses called more than once during a given on-call shift. The usual odds were only about one in four of any given nurse actually being called in while on call.

The court did point out that the nurses in this case went on the clock at their regular hourly rates as soon as they were called to report to work.

Predominantly For The Employer's Benefit versus Waiting To Be Engaged For Work

In the early 1940's the US Supreme Court originated the legal terminology used to interpret the FLSA.

An employee is considered to be working when the employee's time is spent predominately for the benefit of the employer. The opposite is time spent waiting to be engaged, which is considered the employee's own time.

The FLSA does not apply to an employee's own time. The bottom line is that nurses are on their own time while they are on call, the court ruled. **Reimer v. Champion Healthcare Corporation, 258 F. 3d 720 (8th Cir., 2001).**

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