



GOBIERNO DE PUERTO RICO
DEPARTAMENTO DEL TRABAJO Y RECURSOS HUMANOS

March 29, 1999

Re: Inquiry No. 14616

This is in reply to your inquiry regarding hours worked and "on-call" time pursuant to labor laws enforced by this Department. Your specific inquiry is the following:

Some years back we were given beepers to use in our daily labors. I am a technician who works for a very large computer manufacturer, whose job it is to respond to customer calls and go on site. When I first came to work for this company I understood that I would be working eight hours a day, and that if they needed me after hours they would call me at my home for a callout. If I was home I could decide to work or not to work depending what my situation was when I was called. I am a non-exempt employee who gets paid every two weeks and I get overtime when I work after my normal hours of work.

Sometime [sic] back three of us had a meeting with management and were told that we had to carry our beepers with us all the time. Not just from 8am to 5pm, but all the time. The manager said "it is required". In other words, it became a condition of employment. We are not allowed to leave our homes under any circumstances without our beepers. At a meeting we had, the use of the beepers after hours was brought up by one of the employees and a high ranking manager told us that it was a convenient way for them to get us. It was brought up at another meeting, that they new [sic] "who is not responding" to the pages after hours. I complained that I was receiving [sic] more than my share of pages because other people were not responding, because they page everyone until they get someone. I was at a meeting recently where the manager said "if you people don't answer we will have to find out why" [.]

Before the orders were giving [sic] to carry beepers everywhere, I was never required to leave a message as to my whereabouts, if I was called out after hours and was not at home. Now there is no place that I go, nothing that I can do, nothing that I can enjoy, without the fear that my beeper will sound and I either have to go to work or give an excuse as to why I can't, and if I forget it at home, my day is ruined and may have a serious problem if a call came in my area. Many times my beeper goes off and I am disturbed, and then if I answer it, it's for someone else. Many times I am beeped a number of times so that I could call a customer out of my area so that the company could make certain business commitments or achieve [sic] certain goals.

Recently I was working in one of our customers['] office and I met a technician from another company who was there to service some equipment and he started talking about how his company was purchased [sic] by another company and the first thing they did was stop giving him the wages that they had been receiving [sic] for having there [sic] beepers on after 5PM. He told me that management had told them, that as a favor, that they [sic] should keep their [sic] beepers on after 5PM. One of the local managers informed the manager who made the request that, the technician do [sic] not work for free, and they were given back what had been taken away, and their beepers are on again.

Sometime [sic] ago our management looked at the possibility of using beepers after hours but decided against it because of some legal issue, and were afraid that it was compensable. Those managers retired and the new people[,] who came from another type of business, started the business of using beepers after hours.

For years we have been doing what management told us without any compensation what so ever [sic]. We have an umbilical cord that can't be cut. We would like to know if this should have been compensated. Where [sic] we or are we on waiting time or maybe standby or something like that[?] The company has put a communication device on us, and said you will answer it or else. It was not a condition of employment when I was employed by this company. Please let me know what my rights are in this matter[,] if any.

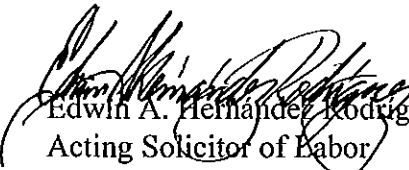
The general rule is that an employee must be paid for all hours worked, i.e., those hours which an employee is required to give to his employer. The answer to your question will thus depend on whether your activities outside regular hours fall within the definition of hours worked, as set forth in Interpretative Bulletin, Title 29, Part 785 of the Code of Federal Regulations. The particular situation that you describe is known as "on-call time", which is discussed in Section 785.17 as follows:

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (*Armour & Co. v. Wantock*, 323 U.S. 126 (1944); *Handler v. Thrasher*, 191 F. 2d 120 (C.A. 10, 1951); *Walling v. Bank of Waynesboro, Georgia*, 61 F. Supp. 384 (S.D. Ga. 1945))

Although both IB 785 and the judicial decisions cited were issued long before the advent of electronic paging devices, the general rule remains unchanged. The issue of whether the employee's time is "given to the employer" remains the key question. Thus, if an employee is not required to remain on the employer's premises (or those of the employer's customers), and therefore may "use the time effectively for his own purposes", the fact that he may be summoned at any time by telephone or through an electronic paging device will not make such time "hours worked" within the meaning of IB 785. Once the employee actually responds to the call and begins to perform work for the employer or the employer's customers, of course, the time is hours worked and thus compensable.

We trust the foregoing explanation will help to clear up your doubts about this matter.

Cordially,


Edwin A. Hernandez Rodriguez
Acting Solicitor of Labor