



GOVERNMENT OF PUERTO RICO

DEPARTMENT OF LABOR AND HUMAN RESOURCES

Pedro J. Rosselló González  
*Governor*

Aura L. González Ríos  
*Secretary*

April 20, 1999

**Re: Inquiry No. 14627**

This is in reference to your inquiry about the performance by field employees of certain duties during lunch periods. You indicate that you are a nonexempt technician paid on an hourly basis plus overtime and that your employer is a local branch of a stateside corporation that sells and services computers. Your specific inquiry is the following:

I have a question that has been bothering me and other people for a long time[,] but we[']re afraid to ask our employer, so I am writing to you so you could clear this up for us.

Our job is to service computers in the customer[']s office. We give twenty four hour service [sic], seven days a week, including holidays. Years ago we were dispatched locally, in other words[,] we called dispatch for our calls, or they called us at the account we were signed out to. Then sometime back, we were all given Portable Terminals or PT, however [sic] you want to call them, and since then, we are being dispatched from the United States. The PT is about 3 inches wide and 10 inches long and had a strap. The new one[,] which is called a RIM, is much smaller and is carried in a pouch on your belt.

We are required to turn on our PT at 8AM in the morning [sic] and are not allowed to turn it off until 5PM[,] which is quitting time. When the PT sounds an alarm, we are required to activate it so as to receive [sic] a service call or message from our fellow workers or from management [sic]. If the PT or RIM is in a dead spot (works by radio)[,] then they beep you on a pager to turn on your PT or RIM to activate the receive [sic] function, or to call dispatch in the United States.

When we receive [sic] a service call we are required to take action immediately and do the following:

1. Read all the information as to who is the customer.
2. Read what the problem is.
3. See what the support people think the problem might be, and see if they recommend a part to be replaced.
4. [C]all the customer for more information and do more problem determination and more important, that he (the customer) knows that you are aware of problem [sic] and are taking action. This is called a CC[,] or CALL CUSTOMER.
5. Give customer an ET (estimated [sic] time of arrival) and inform company of action plan.

We can suffer severe penalties if we miss CC's (CALL CUSTOMER). We have ONE hour to call the customer from the moment he calls our dispatcher. Some calls goes [sic] to our our [sic] support center before it is dispatched to us. By the time the call goes from dispatch to the support center and back to dispatch, part of the [h]our has been used up. [T]hat[']s the reason we were given pagers so as not to miss the CC's[,] or the customer calls. I have been told by management, that to miss three CC's [,] or CALL CUSTOMER could lead to dismissal. And it is a technical indicator, (on my performance [sic] plan)[,] to miss a few could cause you to lose your rating and you would lose monetary gains.

So what is the problem? The problem is that I have to do all these thing [sic] from 8AM to 5PM including my LUNCH hour. Under no circumstances am I allowed to divorce myself from my job on my [l]unch hour. I don't think it is fair that you have to perform on your [l]unch hour, any different then [sic] at any time, of you [sic] regular work day. To me my [l]unch hour is part of my work day.

There has never been any directive to turn off the PT or RIM. It is required to be on and answered IMMEDIATELY[,] no excuses will be accepted.

I would respectively [sic] like to know what my rights are in this issue. I would like to know if that if by [sic] being forced to be available under penalty of lose [sic] of rating or dismisall [sic] and having worked on my [l]unch hour, could this be considered time worked.

Please forgive me for giving you so much information before I got to the problem, but I felt that [y]ou needed to understand the procedure so as I could answer as many questions as you might have had.

The principles involved in determining what constitutes working time are contained in Part 785, Title 29 of the Code of Federal Regulations. The issue of meal periods, in particular, is addressed at Section 785.19 of the Regulations, which provides as follows:

(a) *Bona fide meal periods.* Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. The employee must be completely relieved from duty for the purpose of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. [emphasis supplied] [citations omitted]

The general rule is that an employee must be paid for all time during which he is “employed”. The definition of the term “employ”, pursuant to Sec. 3(g) of the Fair Labor Standards Act (FLSA) includes “to suffer or permit to work”. All such time is part of the employee’s workweek and therefore compensable. The Regulations at Section 785.7 state the following:

The workweek ordinarily includes “all time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” [emphasis supplied]

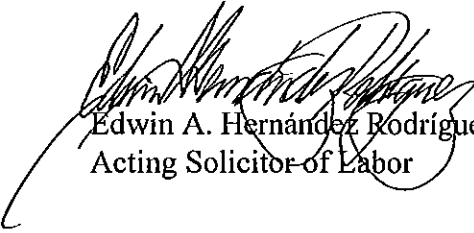
Provisions dealing with meal periods under Puerto Rico law are set forth in Act No. 379 of May 15, 1948, as amended, specifically in Article 15, which in its relevant passage states the following:

The period set to take food shall begin to be enjoyed not before the third [consecutive] working hour is completed nor after the sixth consecutive working hour has begun, so that at no time are the employees required to work more than five consecutive hours without making a pause to take their food.

Immediately following the above, Article 15 of the Act provides that “[e]very employer who employs or permits an employee to work during the period fixed for taking food, shall be bound to pay for said period or fraction thereof at a wage rate equal to double the rate agreed upon for regular hours.” Thus, a lunch period during which the employee is not relieved from duty is not a bona fide meal period under the controlling Federal regulations, and thus becomes compensable time, which under Act No. 379, *supra*, must be paid at double the employee’s regular rate.

We trust the foregoing is responsive to your inquiry.

Cordially,

  
Edwin A. Hernández Rodríguez  
Acting Solicitor of Labor