§ 785.20


(a) Where no permission to leave premises. It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

§ 785.20 General.

Under certain conditions an employee is considered to be working even though some of his time is spent in sleeping or in certain other activities.

§ 785.21 Less than 24-hour duty.

An employee who is required to be on duty for less than 24 hours is working even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for example, who is required to be on duty for specified hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime. (Central Mo. Telephone Co. v. Conwell, 170 F. 2d 641 (C.A. 8, 1948); Strand v. Garden Valley Telephone Co., 51 F. Supp. 898 (D. Minn. 1943); Whitsitt v. Enid Ice & Fuel Co., 2 W. H. Cases 584; 6 Labor Cases para. 61,226 (W.D. Okla. 1942).)

§ 785.22 Duty of 24 hours or more.

(a) General. Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night’s sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked. (Armour v. Wantock, 323 U.S. 126 (1944); Skidmore v. Swift, 323 U.S. 134 (1944); General Electric Co. v. Porter, 208 F. 2d 805 (C.A. 9, 1953), cert. denied, 347 U.S. 961, 975 (1954); Bowers v. Remington Rand, 64 F. Supp. 620 (S.D. Ill. 1946), aff’d 159 F. 2d 114 (C.A. 7, 1946) cert. denied 330 U.S. 843 (1947); Bell v. Porter, 159 F. 2d 117 (C.A. 7, 1946) cert. denied 330 U.S. 813 (1947); Bridgeman v. Ford, Bacon & Davis, 161 F. 2d 962 (C.A. 8, 1947); Rokey v. Day & Zimmerman, 157 F. 2d 736 (C.A. 8, 1946); McLaughlin v. Todd & Brown, Inc., 7 W.H. Cases 1014; 15 Labor Cases para. 64,606 (N.D. Ind. 1948); Campbell v. Jones & Laughlin, 70 F. Supp. 996 (W.D. Pa. 1947).)

(b) Interruptions of sleep. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night’s sleep, the entire period must be counted. For enforcement purposes, the Divisions have adopted the rule that if the employee cannot get at least 5 hours’ sleep during the scheduled period the entire time is working time. (See Eustice v. Federal Cartridge Corp., 66 F. Supp. 55 (D. Minn. 1946).)

§ 785.23 Employees residing on employer’s premises or working at home.

An employee who resides on his employer’s premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all
of the pertinent facts will be accepted. This rule would apply, for example, to
the pumper of a stripper well who resides on the premises of his employer
and also to a telephone operator who has the switchboard in her own home.
\textit{Thompson v. Loring Oil Co.}, 50 F. Supp. 213 (W.D. La. 1943).)

\section*{Preparatory and Concluding Activities}

\textbf{§ 785.24 Principles noted in Portal-to-Portal Bulletin.}

In November, 1947, the Administrator issued the Portal-to-Portal Bulletin
(part 790 of this chapter). In dealing with this subject, \textbf{§ 790.8 (b) and (c) of
this chapter said:}

\begin{itemize}
  \item[(b)] The term ‘‘principal activities’’ includes all activities which are an integral
part of a principal activity. Two examples of what is meant by an integral part of a prin-
cipal activity are found in the report of the Judiciary Committee of the Senate on the
Portal-to-Portal bill. They are the following:
  \begin{itemize}
    \item[(1)] In connection with the operation of a lathe, an employee will frequently, at the
beginning of his workday, oil, grease, or clean his machine, or install a new cut-
ting tool. Such activities are an integral part of the principal activity, and are in-
cluded within such term.
    \item[(2)] In the case of a garment worker in a textile mill, who is required to report 30 min-
utes before other employees report to commence their principal activities, and who
during such 30 minutes distributes clothing or parts of clothing at the workbenches of
other employees and gets machines in readiness for operation by other employees, such
activities are among the principal activities of such employee.
  \end{itemize}

\section*{§ 785.25 Illustrative U.S. Supreme Court decisions.}

These principles have guided the Administrator in the enforcement of the
Act. Two cases decided by the U.S. Supreme Court further illustrate the
types of activities which are considered an integral part of the employees’ jobs.
In one, employees changed their clothes and took showers in a battery
plant where the manufacturing process involved the extensive use of caustic and
toxic materials. (\textit{Steiner v. Mitchell}, 350 U.S. 247 (1956).) In another case,
knifemen in a meatpacking plant sharpened their knives before and after
their scheduled workday (\textit{Mitchell v. King Packing Co.}, 350 U.S. 260 (1956)). In
both cases the Supreme Court held that these activities are an integral
and indispensable part of the employees’ principal activities.

\textbf{§ 785.26 Section 3(o) of the Fair Labor Standards Act.}

Section 3(o) of the Act provides an exception to the general rule for em-
ployees under collective bargaining agreements. This section provides for
the exclusion from hours worked of time spent by an employee in changing
clothes or washing at the beginning or end of each workday which was ex-
cluded from measured working time during the week involved by the ex-
press terms of or by custom or practice under a bona fide collective-bargaining
agreement applicable to the particular employee. During any week in which
such clothes-changing or washing time was not so excluded, it must be count-
ed as hours worked if the changing of clothes or washing is indispensable to
the performance of the employee’s work or is required by law or by the
rules of the employer. The same would be true if the changing of clothes or
washing was a preliminary or postliminary activity compensable by