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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELAINE CHAO, Secretary of Labor,)
United States Department of Labor,)
Plaintiff,)
v.)
JASMINE HALL CARE HOMES, INC., a)
corporation; HALL CARE HOMES, INC.,)
a corporation; GEORGE K. HALL, an)
individual; and ESTELA HALL, an)
individual,)
Defendants.)

2:05-cv-1306-GEB-KJM

ORDER*

The parties filed cross motions for partial summary judgment on the issue whether Defendants can invoke, as an exemption to the requirements of the Fair Labor Standards Act ("FLSA"), 29 C.F.R. § 785.23, which allows employees residing on their employer's premises to enter into reasonable agreements with the employer regarding hours worked, for those employees who shared a bedroom with other employees. (Pl.'s Mot. at 7:5-9; Defs.' Mot. at 1:8-9.) For the reasons stated, Defendants may not invoke § 785.23 for any employee that shares or shared a bedroom. Accordingly, Defendants' motion for partial summary

* This matter was determined to be suitable for decision without oral argument. L.R. 78-230(h).

1 judgment is denied and Plaintiff's motion for partial summary judgment
2 is granted.

3 BACKGROUND

4 I. Facts

5 Defendants provide residential care for developmentally
6 disabled individuals at Jasmine Hall Care Homes, located in
7 residential neighborhoods throughout Sacramento, California. (Defs.'
8 Mot. at 2:15-19.) Jasmine Hall residential care assistants
9 ("employees") are typically on-duty five twenty-four-hour shifts per
10 week and have two days off per week. (Joint Pretrial Statement, ¶
11 3(d).) Defendants pay their employees for eight out of the twenty-
12 four on-duty hours per shift and provide them free room and board.
13 (Id. ¶ 3(f), (g).) Employees typically reside on the premises in
14 bedrooms separate from the clients, but sometimes employees share
15 bedrooms with other employees. (Id. ¶ 3(H); Defs.' Mot. at 2:16-18.)

16 The Secretary of Labor filed this action to recover, inter
17 alia, on behalf of Defendants' employees, overtime back wages owed
18 them under the FLSA for the on-duty hours that were not compensated
19 and to enjoin Defendants from committing future minimum wage and
20 overtime violations of the FLSA. (Compl. 1-2.) Defendants argue that
21 their practice of only paying their employees for eight of the twenty-
22 four on-duty hours per shift does not violate the FLSA because they
23 qualify for an exemption under § 785.23. (Defs.' Opp'n to Pl.'s Mot.
24 for Summ. J. (Docket # 48) at 9:13-10:6.)

25 II. The FLSA and Department of Labor Interpretations

26 "The FLSA requires that covered employees be paid at least
27 the prescribed minimum hourly wage and receive at least 1 ½ times
28 their regular hourly wage for overtime hours." Bouchard v. Reg'l

1 Governing Bd. of Region V Mental Retardation Serv.s, 939 F.2d 1323,
2 1327 (8th Cir. 1991) (citing 29 U.S.C. §§ 206, 207). "In 1961 the
3 Department [of Labor ("DOL")] issued an interpretive bulletin . . .
4 discussing what constitutes compensable work time for FLSA purposes."
5 Id. That bulletin included a regulation titled "[e]mployees residing
6 on employer's premises or working at home" that allows an employer to
7 make a "reasonable agreement" with their employee regarding
8 compensable work hours. The regulation prescribes:

9 [a]n employee who **resides on his employer's**
10 **premises** on a permanent basis for extended periods
11 of time is not considered working all the time he
12 is on the premises. Ordinarily, he may engage in
13 normal private pursuits and thus have enough time
14 for eating, sleeping, entertaining, and other
15 periods of complete freedom from all duties when
16 he may leave the premises for purposes of his own.
17 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.

18 29 C.F.R. § 785.23 (emphasis added).¹

19 In 1981, the DOL released an Opinion Letter that clarified
20 what it means to "reside" on an employer's premises. Opinion Letter
21 Fair Labor Standards Act (FLSA), 1981 WL 179033 (Dep't of Labor, Feb.
22 3, 1981) ("1981 Letter"). The DOL stated in the 1981 Letter, "[w]here
23 the facilities offered by the employer provide a home-like environment
24 with **private quarters** separate from the residents of the group home,
25

26 ¹ Section 785.23 is an interpretive rule, "which merely state[s]
27 the agency's position on what the underlying statute means in particular
28 contexts, [and does] not have the force of law." Shannon v. Pleasant
Valley Comty. Living Arrangements, Inc., 82 F. Supp. 2d 426, 433 (W.D.
Penn. 2000).

1 we would regard such employees as residing there" Id.
2 (emphasis added).

3 In 1988, the DOL released an Enforcement Policy for the
4 Residential Care industry which reiterated the private quarters
5 requirement and further defined "private quarters" to mean

6 living quarters that are furnished; **are separate**
7 from the 'clients' and **from any other staff**
8 members; have as a minimum the same furnishings
9 available to clients (e.g. bed, table, chair,
lamp, dresser, closet, etc.) and in which the
employee is able to leave his or her belongings
during on- and off-duty periods.

10 Hours Worked in Residential Care (Group Home) Establishments-Sleep
11 Time and Related Issues-Enforcement Policy, 1988 WL 614199 (Dep't of
12 Labor, June 30, 1988) ("1988 Enforcement Policy") (emphasis added).

13 ANALYSIS

14 The issue is whether Defendants may invoke § 785.23 as an
15 exemption to the FLSA's wage requirements for those employees who
16 "reside" on their premises but who share a bedroom with other
17 employees. (Defs.' Opp'n at 1:8-9.) The DOL's 1988 Enforcement
18 Policy clearly answers this question in the negative. It states that
19 employees covered by the exemption in § 785.23 must reside in "private
20 quarters" and "private quarters" means rooms that "are separate . . .
21 from any other staff members." The only question, therefore, is
22 whether deference will be given to the DOL interpretation of § 785.23.

23 Plaintiff argues that its 1988 Enforcement Policy is
24 "entitled to controlling judicial deference" because it "constitutes
25 an agency's interpretation of its own regulation to a particular
26 industry and because it is long-standing, was developed after careful
27 consideration, and was based on fundamental principles set forth in
28 early landmark FLSA cases that 'sleep time' can be deducted by an

1 employer, generally, only when the employee is provided with a 'home-
2 like environment.'" (Pl.'s Mot. at 6:11-17 (citing Long Island Care
3 Homes v. Coke, 127 S.Ct. 2339 (2007)); In re Farmers Ins. Exch., v.
4 Farmers Ins. Exch., 481 F.3d 1119 (9th Cir. 2007).) Defendants rejoin
5 that the DOL's interpretive bulletins are not binding regulations and
6 are not entitled to deference.

7 Reasonable agency interpretations of their own regulations
8 are entitled to deference by the courts. Cnty. Hosp. of Monterey
9 Peninsula v. Thompson, 323 F.3d 782, 794-96 (9th Cir. 2003) (applying
10 a reasonableness standard to an agency's interpretations of its
11 interpretative manuals); Bouchard v. Reg. Governing Bd. of Region V
12 Mental Retardation Serv.s., 939 F.2d 1323, 1330 (8th Cir. 1991)
13 (evaluating the agency's interpretation of its own regulation in
14 letter rulings for determination whether it was reasonable on its face
15 and entitled to deference by the courts); Shannon, 82 F. Supp. 2d at
16 433 (requiring DOL Memorandum requirements for § 785.22 to be met when
17 that memorandum does not contradict the statute or previous agency
18 interpretations).

19 The DOL's 1988 Enforcement Policy "was developed after
20 extensive consultation with representatives of the residential care
21 industry [and] represents a relaxation of the rules to accommodate
22 practices in the industry." (Pl.'s Mot. Ex. 5 (1994 Wage and Hour
23 Opinion Letter).) In addition, the trade association of residential
24 support services, American Network of Community Options and Resources
25 ("ANCOR"), asked the DOL to reexamine parts of its 1988 Enforcement
26 Policy, but notably, did not ask it to reexamine the private room
27 requirement. (See Pl.'s Reply Ex. E. (Joni Fritz, ANCOR Comments on
28 DOL 2004 Sleep Time Opinion Letter, (2004)).)

1 Defendants argue the 1988 Enforcement Policy should not be
2 given deference because it is inconsistent with prior interpretations.
3 Requiring private quarters separate from other employees does not
4 conflict with § 785.23 or previous DOL interpretations of what
5 § 785.23 requires. Defendants have not shown that the DOL ever issued
6 an interpretation of § 785.23 permitting its use as an exclusion for
7 those employees who share or shared bedrooms.² The DOL's 1981 Letter
8 interpreted § 785.23 to require "private quarters separate from the
9 residents of the group home." The DOL's further clarification that
10 "private quarters" means "separate . . . from any other staff" is not
11 inconsistent with the 1981 Letter; the first dictionary definitions of
12 "private" are "[s]ecluded from the sight, presence, or intrusion of
13 others" and "[d]esigned or intended for one's exclusive use." The
14 American Heritage Dictionary (4th ed. 2006).

15 Finally, § 785.23 requires that employees be able to engage
16 in "private pursuits," and provides an example of such a pursuit. For
17 the reasons stated, it is reasonable to interpret "reside" in § 785.23
18 to mean living alone in a private room.

19 Defendants argue that deference to the DOL's interpretation
20 is not warranted because "courts have accepted shared bedrooms [for
21 purposes of allowing employees to invoke § 785.23] and rejected the
22 concept of an individual room requirement." (Defs.' Opp'n at 4:13.)
23 The cases cited by Defendants, however, interpret 29 C.F.R. § 785.22,
24

25 ² Defendants argue that the DOL has had conflicting
26 interpretations of § 785.23 because in a prior summary judgment motion
27 in this action it opined that spouses need not be provided separate
28 bedrooms, and in a 1998 audit of Defendants' premises the DOL found no
FLSA violations. (Defs.' Opp'n at 15:7-16.) However, the DOL's further
policy pronouncement regarding married couples, and past failure to
enforce its private room requirement, does not support Defendants'
assertion that a conflicting interpretation existed.

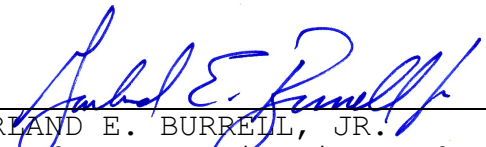
1 which requires an employer to provide "adequate sleeping facilities"
2 before sleep time may be deducted from a shift of twenty-four-hours or
3 more. These cases do not construe the term "reside" in § 785.23.
4 Defendants further argue that the 1988 Enforcement Policy has been
5 rejected by courts, citing Bouchard, 939 F.2d at 1331-32. The
6 Bouchard court, however, did not reject the 1988 Enforcement Policy
7 altogether; Bouchard only rejected (in dicta) the amenities
8 requirement of the 1988 Enforcement Policy. Id. at 1332.

9 CONCLUSION

10 For the reasons stated, Defendants may not invoke § 785.23
11 as an exemption to the FLSA's requirements for those employees who
12 share a bedroom. Accordingly, Plaintiff's motion for partial summary
13 judgment is granted and Defendants' motion for partial summary
14 judgment is denied.

15 IT IS SO ORDERED.

16 Dated: December 28, 2007

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GARLAND E. BURRELL, JR.
United States District Judge