NOTE: This opinion letter when sent out should always be accompanied by Op. No. 231 - 1971.

Answer by letter-Jones

November 20, 1969

OPINION LETTER NO. 398

FILED
398

Mr. George W. Flexsenhar, Director
Division of Industrial Inspection
Broadway State Office Building
Jefferson City, Missouri 65101

Dear Mr. Flexsenhar:

This is to acknowledge receipt of your letter of recent date with enclosures requesting an opinion from this office as to whether two rest periods 15 minutes each and a lunch period of 30 minutes are to be counted as "hours worked" within the meaning of Section 290.040, RSMo 1959.

The wording of the above statute prohibits the employment of females in enumerated types of businesses for a longer period than 9 hours during any one day and more than 54 hours during any one week. The assumption is made that the statute is applicable to the business of the company in question.

With these principles in mind, the enclosures that you have provided us indicate that the policies for consideration are as follows:

> "As noted previously our employees are paid for eight hours each shift. However, during each eight hour shift, they are given two fifteen minute breaks and one thirty minute lunch period (with pay) during which times they may leave their work areas and go to the locker rooms, plant cafeteria or step outside the building if they so desire. When a female's turn for over-time occurs we allow her an opportunity to work an additional two hours beyond the end of her shift if she elects to do so, is qualified and is physically capable of performing the job.

> This, of course, would show as ten hours of pay on her time card but deducting the one hour of break and lunch time she would be working only nine hours. We use this same reasoning in determining when a female has reached fifty-four hours in a week."

We will first consider the issue of two rest periods of 15 minutes each. In the case of Aeromotive Metal Products, Inc. v. Wirtz, 312 F.2d 728 (C.A. 9, 1963), it was held that a finding that a 15 minute mid-morning break period did not increase production or reduce mistakes or cut down on absenteeism or employee turnover but that it improved the employer-employee relationship supported a conclusion that a rest period which was not sufficiently long to enable employees to make beneficial personal use of the time, was predominantly for the benefit of the employer and had to be counted as hours of employment. The case of Mitchell v. Greinetz, 235 F.2d 621, 13 W.H. Cases 3 (C.A. 10, 1956) reveals that judicial knowledge was taken of the fact that coffee breaks or short rest periods are rapidly becoming an acceptable part of employment generally. An interpretative bulletin issued by the wage and hour administrator indicates that rest periods of short duration running from 5 minutes to about 20 minutes are common in industry, promote the efficiency of the employee and must be counted as hours worked. See Interpretative Bulletin, Title 29, Part 785, Code of Federal Regulations, Section 785.18. In view of these authorities, we are persuaded that two rest periods of 15 minutes each, should be counted as hours worked within the meaning of Section 290.040, RSMo 1959.

We will now consider the issue of a lunch period of 30 minutes. In the case of Neal v. Braughton, 111 F.Supp. 775 (W.D. Ark. 1953), the court held that if a time designated as a lunch period is spent predominantly for the employer's benefit, it is working time for purposes of the Fair Labor Standards Act, but if the employee is free to leave the premises and do as he pleases during the lunch period, such time is not working time within the Act. For a similar interpretation see Culkin v. Glenn L. Martin Nebraska Co., 97 F.Supp. 661 (D. Neb. 1951), aff'd 197 F.Supp. 661 (C.A. 8, 1952), cert. denied 344 U.S. 866 (1952), rehearing denied 344 U.S. 888 (1952). An interpretative bulletin issued by the wage and hour administrator indicates that bona fide meal periods are not worktime. It is further stated that the employee is not relieved from work if he is required to perform any duties, whether active or inactive, while eating. See Interpretative Bulletin, Title 29, Part 785, Code of Federal Regulations, Section 785.19. An analysis of the factual situation reveals that during their lunch periods the employees are allowed to leave their work areas and go the locker rooms, plant cafeteria or step outside the building if they so desire. It is therefore our view that the employees are able to use the time effectively for their own purposes and that a meal period of 30 minutes

is not to be counted as hours worked within the meaning of Section 290.040, RSMo 1959.

To summarize our views in regard to the above, it is our belief that within the meaning of Section 290.040, RSMo 1959, two rest periods of 15 minutes each are to be counted as hours worked, but that a meal period of 30 minutes is not to be counted as hours worked where the employee is free to follow pursuits of a purely private nature. It is therefore our opinion that a company which employs women for 10 hours a day with two rest periods of 15 minutes each, and a lunch period of 30 minutes, is in violation of Section 290.040, RSMo 1959.

Yours very truly,

JOHN C. DANFORTH
Attorney General