§ 785.20

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. 951, 957 (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 Eastice 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