

**DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT***Headquarters Office*

Fremont Street, Suite 3250  
San Francisco, CA 94105  
(415) 975-2080  
(415) 975-0772 Fax



*Office of the  
State Labor Commissioner*

May 29, 1998

Re: Exclusion of Sleep Periods from Hours Worked Under the  
Ambulance Driver and Attendant Provisions of IWC Orders  
5-98 and 9-98

In reviewing my letter to you, dated October 22, 1997, concerning the impact of the new Industrial Welfare Commission ("IWC") Wage Orders, it has become apparent that we must clarify our answer to the question: "Under Wage Order 5 and 9, what hours does an employer have to count as time worked if an employee does not receive eight hours of uninterrupted sleep time? Is it all the sleep time or only the hours that were actually worked?"

As indicated in the earlier letter, there are provisions in both IWC Orders 5-98 and 9-98, dealing with ambulance drivers and attendants, that allow such employees who are scheduled for 24 hour shifts of duty to agree, "in writing to exclude from daily time worked not more than three meal periods of not more than one hour each and a regularly scheduled uninterrupted sleep period of not more than eight hours."

In order to exclude such a sleep period from daily time worked, the sleep period must be "regularly scheduled" and "uninterrupted." The IWC Orders provide for a maximum exclusion of eight hours sleep time, so that even if the employee enjoys a regularly scheduled sleep period of more than eight hours, only eight hours can be excluded.

Unfortunately, the previous letter suggested that if the employee receives less than eight hours uninterrupted sleep, all sleep time must be counted as time worked and paid accordingly. In fact, the question of whether sleep periods of less than eight hours can be excluded from daily time worked was addressed by the

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court in Monzon v. Schaefer Ambulance Service (1990) 224 Cal.App.3d 16. In that case, the court held that under the IWC Orders that preceded 5-98 and 9-98, an employer can enter into an agreement with ambulance drivers and attendants "to exclude up to eight hours of sleep time from work or compensable time on twenty-four hour shifts if adequate sleeping facilities are provided by the employer and the employee has the opportunity to get at least five hours of uninterrupted sleep. If the employee does not get five hours of uninterrupted sleep, then the entire time must be considered as hours worked." This holding was largely based upon the express intent of the IWC in its "Statement on Special Provision for Ambulance Industry in Orders 5-80 and 9-80."

Although Monzon was decided under the former Wage Orders, its reasoning, as to the amount of uninterrupted sleep time that can be treated as non-work time, would appear to apply with equal force to the new Orders. We therefore conclude that under IWC Orders 5-98 and 9-98, uninterrupted sleep time of at least five hours, but no more than eight hours, can be excluded from time worked, provided that there is an agreement between the employer and the ambulance drivers and attendants to exclude sleeping time from hours worked, that the sleep period is regularly scheduled, and that the employer provides adequate sleeping facilities. If the sleep time is not uninterrupted, or if any other requirement for the exclusion of such hours from time worked is lacking, all sleep hours would constitute compensable hours worked.

Please accept my apology for any confusion caused by the previous letter on this subject. As always, feel free to contact me with any other questions or comments.

Sincerely,



JOSE MILLAN  
State Labor Commissioner

cc: Robyn Black  
John Duncan  
John Rea

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