

January 31, 2018

Answers to Questions Posed by Covered Businesses

Question

We would like to clarify what the rules are regarding wages for staff using a vacation benefit. For example, a server (making \$2.73/hr) who uses a week's paid vacation would typically be paid at the Virginia State minimum wage \$7.25/hr. Under the Airport Workers Wage Program, are we required to pay the server \$11.25/hr for vacation time? Just want to make sure we are in compliance.

Response

In this and other areas not specifically addressed by the Authority's Airport Workers Wage Program rules (O&I 5-4-1), the Authority turns to applicable federal rules that are used in the administration of the federal minimum wage requirements established in the Fair Labor Standards Act.

The FLSA rules do not apply the federal minimum wage requirements to vacation, sick or other hours of leave that an employer elects to provide its employees. The rules do not require that such hours of leave be compensated at all by an employer, let alone at the federal minimum wage rate. The FLSA rules address only hours that are worked by employees, and do not require employers to make any payment for non-worked time, including vacation, sick and holiday time. Whether an employer pays its employees for such non-worked time is up to the employer, and may be a matter of agreement between an employer and its employees or the employees' representative.

Similar to the FLSA, the Airports Workers Wage Program requires Covered Businesses to pay its Covered Workers only for the hours they work. See, e.g., O&I 5-4-1, Section 3 in Part II, Paragraph C. The program and its wage requirements do not reach vacation, sick or other non-worked hours for which Covered Businesses might elect or agree to pay their Covered Workers. Thus, whether Covered Businesses pay for any such non-worked hours, and the amount they pay, is a matter to be decided by the businesses, including in the context of an agreement with their employees or the employees' representative.

In short, the Workers Wage Program does not require Covered Businesses to pay their Covered Employees for non-worked vacation time. As under the FLSA rules, every Covered Business may decide (i) whether to provide paid vacation time to its Covered Workers and, if it elects to do so, (ii) the rate of compensation to pay for such time.