

N.D.A.G. Letter to Dockter (Oct. 25, 1991)

October 25, 1991

Mr. Jon Dockter
Deputy Commissioner
North Dakota Department of Labor
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Dockter:

Thank you for your September 30, 1991, letter regarding whether employees may waive their right to overtime under the Fair Labor Standards Act.

29 U.S.C. § 207(a)(1) provides that "no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." Interpreting the Fair Labor Standard Act, federal courts have stated that the Act's requirements are "statutory and a matter of general public policy, and cannot be waived or contracted away by individual employers and employees." Mitchell v. Turner, 286 F.2d 104, 106 (5th Cir. 1960); See also Mumbower v. Callicott, 526 F.2d 1183, 1188 (8th Cir. 1975) (employer's obligation to pay overtime cannot be waived). In a more recent decision, the United States Supreme Court stated that "FLSA rights cannot be abridged by contract or otherwise waived because this would 'nullify the purposes' of this statute and thwart the legislative policies it was designed to effectuate." Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728, 740 (1981) (quoting Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 707 (1945)).

The above cases make it clear that employees may not waive their right to overtime under 29 U.S.C. § 207.

I trust that this letter responds to your question.

Sincerely,

Nicholas J. Spaeth

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