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U. S. GPO

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20048**

FILE: B-190912

DATE: April 27, 1978

**MATTER OF: Transportation Systems Center -- Statute of
Limitations on Claims under Fair Labor
Standards Act**

DIGEST 1. Certifying officer questions what is the statute of limitations on claims filed by Federal employees under Fair Labor Standards Act (FLSA). Although there is a time limitation on "actions at law" under FLSA, there is no statutory time limitation when such claims may be filed as claims cognizable by GAO. Therefore, time limit for filing FLSA claims in GAO is 6 years. 31 U.S.C. §§ 71a and 237.

2. Authority of GAO to consider FLSA claims of Federal employees is derived from authority to adjudicate claims (31 U.S.C. § 71) and authority to render advance decisions to certifying or disbursing officers or heads of agencies on payments (31 U.S.C. §§ 74 and 82d). Nondoubtful FLSA claims may be paid by agencies. In order to protect the interests of employees, claims over 4 years old should be forwarded to GAO for recording.

This action is in response to a request for an advance decision from John F. Linehan, a certifying officer with the Transportation Systems Center (Center), U.S. Department of Transportation, Cambridge, Massachusetts, dated December 7, 1977, reference DTS-833, concerning the entitlement of certain nonexempt employees of the Center to retroactive payments of overtime compensation under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq. (Supp. V, 1975).

The request from the Transportation Systems Center indicates that while the Fair Labor Standards Amendments of 1974 extended the FLSA coverage to Federal employees, effective May 1, 1974, the Center did not implement those provisions until November 20, 1977. The Center was apparently first made aware of the applicability of the FLSA to its employees when an internal audit report on

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payroll activities was issued on July 13, 1977. This report recommended that the provisions of the FLSA be implemented retroactive to May 1, 1974. The certifying officer questions whether retroactive payments are restricted to the 2-year statute of limitations contained in the FLSA and whether an agency may pay retroactive overtime compensation under the FLSA without having claims filed by the employees. We note that subsequent to the submission of this request for a decision, the certifying officer forwarded to our Office the claims of several current or former employees of the Transportation Systems Center for overtime compensation under the FLSA.

As noted above, the Fair Labor Standards Amendments of 1974, Public Law 93-259, approved April 8, 1974, 88 Stat. 60, extended the FLSA coverage to employees of the Federal Government. Since the Civil Service Commission (CSC), under 29 U.S.C. § 204(f) (Supp. V, 1975), is authorized to administer the FLSA with respect to Federal employees, we requested the CSC's views on this matter. By letter dated March 16, 1978, the General Counsel of the CSC responded to our request by first noting the provisions of the Portal-to-Portal Act at 29 U.S.C. § 255(a), which provide that a cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages shall be forever barred unless commenced within 2 years (3 years for willful violations) after the cause of action accrued. An action is commenced within the meaning of 29 U.S.C. § 255 on the date a complaint is filed in court. 29 U.S.C. § 256. Thus, the CSC letter concludes that if the Transportation Systems Center employees are successful in suing for backpay under the FLSA, the court could grant relief no further back than 2 years (3 years for willful violations) from the date of the complaint.

The CSC letter continues, however, by stating that the question is not what statute of limitations is applicable to a judicial proceeding but rather what limitation exists on administrative determinations of FLSA entitlements. The CSC cites our decision 51 Comp. Gen. 20 (1971) in which we held that time limitations for the commencement of an "action at law" contained

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in the Communications Act (1 year) and the Interstate Commerce Act (2 years) do not affect the jurisdiction of our Office to consider claims against the United States cognizable by our Office under 31 U.S.C. §§ 71 and 236 under the applicable time limitation for such claims (currently 6 years) as provided in 31 U.S.C. §§ 71a and 237. By distinguishing between limitations applicable to "actions at law" and limitations applicable to administrative claims filed with our Office, the CSC concludes that the time limitation in the Portal-to-Portal Act would not apply to the authority of our Office to consider claims against the United States, and, in particular, to the FLSA claims which are at issue in this decision.

The applicable statute of limitations on claims or demands against the United States cognizable by our Office is contained in 31 U.S.C. §§ 71a and 237 (Supp. V, 1975) which provides, in pertinent part, as follows:

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim * * * shall be received in said office within 6 years after the date such claim first accrued * * *."

As noted above, we have held that the time limitations for the commencement of "actions at law" do not affect the jurisdiction of our Office to consider claims against the United States and that, unless otherwise specifically provided for by statute, we are required, as a general rule, to consider any claim against the United States cognizable by our Office if it is presented within the requisite period of limitation as stated above after the date the claim first accrued. 51 Comp. Gen. 20, supra. See also 33 id. 66 (1953). In the absence of any statutory provision limiting the authority of our Office to consider the claims of nonexempt Federal employees to overtime compensation under the FLSA, we hold that the time limitation for the filing of claims by Federal employees under the FLSA which may be considered by our Office is 6 years as provided in 31 U.S.C. §§ 71a and 237 (Supp. V, 1975).

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With regard to what action should be taken on the claims received by the certifying officer in the present case, the jurisdiction of our Office with respect to the claims of Federal employees for overtime compensation under the FLSA is derived from the authority to adjudicate claims, 31 U.S.C. § 71 (1970), and the authority to render advance decisions to certifying or disbursing officers or heads of agencies on questions involving payments, 31 U.S.C. §§ 74 and 82d (1970). Therefore, we hold that where the agency has received nondoubtful claims and has determined there is a retroactive entitlement to overtime under the FLSA, the agency may make such payments to its employees provided such payments are not barred under 31 U.S.C. §§ 71a and 237. Moreover, the agencies have been instructed by CSC to make computations to determine whether nonexempt employees are entitled to overtime under the FLSA. See, for example, CSC's Federal Personnel Manual Letter No. 551-10, dated April 30, 1976, instructing agencies to recompute retroactive to May 1, 1974, traveltime which may be regarded as "hours of work" under the FLSA. If these computations show that overtime compensation is due under the FLSA, the employees may be paid without submission of claims. In order to protect the interests of employees, claims which have accrued more than 4 years ago and not promptly be approved and paid in full in the amount claimed should be forwarded to the Claims Division for recording.

Accordingly, action should be taken by the Transportation Systems Center consistent with the above.

Deputy

R. F. Keller
Comptroller General
of the United States