

UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor

WASHINGTON

August 27, 1942

LEGAL FIELD LETTER

No. 55(a)

Addendum

The general principle expressed in Legal Field Letter No. 55 will be followed by the Wage and Hour Division as well as by the Public Contracts Division in cases where different wage rates are applicable in a given case under the Fair Labor Standards Act and the Public Contracts Act. It will be held, in such cases, that the "regular rate" of pay under the Fair Labor Standards Act or the "basic rate" under the Public Contracts Act, for purposes of determining overtime due under those acts, cannot be lower than the highest minimum wage rate applicable under either the Fair Labor Standards Act or Public Contracts Act. In other words, the position will be taken that the "basic" or "regular" rate of pay cannot be less than the rate which the employer is legally obliged to pay as straight time, whether this be by virtue of the Fair Labor Standards Act or the Public Contracts Act.

For instance, the basic rate under the Public Contracts Act for purposes of computing overtime for employees who are also covered by the Fair Labor Standards Act wage order for the wood furniture industry cannot be less, under this rule, than 40 cents an hour. Similarly, the regular rate of pay under the Fair Labor Standards Act for employees who are also covered, for example, by the wage determination under the Public Contracts Act for non-auxiliary workers in the men's hats and caps industry, cannot be less than 67-1/2 cents an hour, for purposes of computing overtime.

The foregoing discussion relates simply to situations where overtime is worked. In a situation where there is no overtime, there can be no enforcement under the Fair Labor Standards Act of the minimum wage set under the Public Contracts Act, and no enforcement under the Public Contracts Act of the minimum wage set under the Fair Labor Standards Act.

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UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor

WASHINGTON

May 6, 1941

LEGAL FIELD LETTER

No. 55

SUBJECT: Computation of Regular Rate of Pay and  
Overtime Compensation Under the Fair  
Labor Standards Act in Cases where a  
State Minimum Wage Applies

In recent months the following problem has frequently  
arisen:

Assume that an employer is required by a state minimum wage law to pay an employee (who is also covered by the Fair Labor Standards Act) at a minimum hourly rate of 35 cents. Assume also that the minimum rate applicable under the Fair Labor Standards Act is 30 cents in this instance. When the employer actually pays the employee at a rate of 30 cents per hour in violation of the state statute, the question presented is: What is such employee's regular hourly rate of pay for the purpose of computing extra compensation for overtime under Section 7 of the Fair Labor Standards Act.

In our opinion, the employee's regular rate of pay cannot be said to be less than the rate which either the Federal or State law requires the employer to pay as straight time compensation. This is based upon the premise that no contract between an employer and employee is valid which calls for a straight time rate which is in violation of law and, therefore, the contracting parties must be presumed to have agreed to a rate which complies with both such laws.

It is also clear that Congress did not intend that a violator of Section 6 should be rewarded for his violation with a lower overtime penalty per hour than that which is imposed upon employers who comply with Section 6. It is likewise unreasonable to suppose that the Congress intended an advantage to accrue in terms of reduced overtime penalty to the employer who is violating

a State minimum wage law. The words "regular rate at which he [employee] is employed" as used in Section 7 must, therefore, be construed to mean the "lawful rate at which he [employee] is employed." This conclusion is further supported by Section 18 of the Fair Labor Standards Act which provides that no provision of the Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Act. Since, in the example given above, the state law requires the payment of 35 cents per hour, the regular rate of pay cannot be less than 35 cents. Enforcement of the state minimum in this instance is an incident to the proper enforcement of Section 7 of the Fair Labor Standards Act.

It is true that in enforcing overtime compensation on the basis of a regular rate of pay which is at least equal to the state minimum, we are also enforcing the payment of the state minimum for all straight time as well as overtime. This, however, is necessary in all instances where overtime is worked, since it cannot be demonstrated that an employer has paid for overtime unless he also pays the straight time. For example, an employer who employs an employee at a regular hourly rate of pay of \$1.00 an hour must pay him \$52  $[(40 \times \$1) + (8 \times \$1.50)]$  or  $(48 \times \$1) + (8 \times .50)$  for 48 hour work-week to comply with the overtime standards of the Fair Labor Standards Act. Similarly, in the case where the state minimum is 35 cents per hour, the employer cannot show that he has paid 52½ cents for each overtime hour unless he also pays 35 cents for each straight time hour.

In situations, however, where an employee has worked no overtime within the terms of the Fair Labor Standards Act, the Wage and Hour Division has no authority to enforce a state minimum wage which is in excess of the applicable minimum payable under Section 6. True, Section 18 states that no provision of the Fair Labor Standards Act shall be construed to excuse noncompliance with any state law establishing a minimum higher than that established in the Fair Labor Standards Act, but no sanctions are contained in the Act for action contrary to Section 18. Hence, there is no penalty provision which the Division can invoke in such a situation.

In the States of California and Minnesota and in the District of Columbia, a slightly different question than that previously discussed has been presented. In those places, the state minimum wage requirements are imposed in terms of a minimum weekly wage rather than in terms of an hourly rate. In these instances we have taken the position that the minimum weekly wage required under a state law should always be viewed as "straight time" compensation exclusive of any extra compensation for overtime. In

other words, the regular rate of pay should be determined by dividing the weekly wage which must be paid as straight time compensation under the state law by the number of hours worked in the particular workweek. Since compliance with a state weekly minimum wage provision requires that the employee receive a certain weekly sum even though he works no overtime within the terms of the Fair Labor Standards Act, it cannot be said that the same sum includes extra compensation for overtime when such overtime is worked.

In view of this, our opinion is that the situation created by application of a state weekly minimum wage is much the same as that which arises where an employer undertakes to pay an employee a fixed weekly wage or salary regardless of the number of hours worked by the employee. The method of computing regular rate of pay should be the same as that outlined in paragraph 12 of Interpretative Bulletin No. 4. Thus, it is the weekly minimum wage and not an hourly wage which may be established by the employer which determines the employee's regular rate of pay for overtime purposes under the Fair Labor Standards Act.

It is, therefore, our opinion that inspectors should take the state minimum hourly rate or the state minimum weekly wage as the minimum basis for computing the regular rate of pay for a workweek in which overtime under the Fair Labor Standards Act is involved.