

UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor

March 14, 1944

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LEGAL FIELD LETTER
No. 92

Walsh-Healey Act

SUBJECT: Overlapping Workweeks; Computation of Compensation Due for Straight Time and Overtime under Fair Labor Standards Act and Walsh-Healey Act where Workweek is Changed.

The following statement of the Division's policy with respect to compensation of employees whose workweek is changed supersedes that contained in the third paragraph of Legal Field Letter No. 87, page 30:

A change of the workweek from one period of seven consecutive days to another period of seven consecutive days necessarily creates an overlap between the last workweek in the old schedule and the first workweek in the new; that is, certain hours in the "two-week" change-over period fall within both workweeks.

If the hours which fall within both workweeks are hours in which the employee does no work, his statutory compensation for each workweek is, of course, determinable as it would be if no overlap existed.

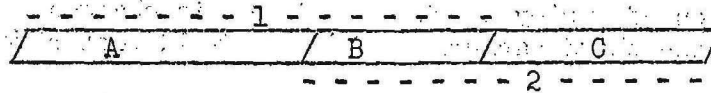
If, on the other hand, some of the employee's worktime falls within hours which are included in both workweeks, the Division, as an enforcement policy, requires the employee's straight time and overtime compensation to be computed by counting such worktime as "hours worked" in whichever of the two workweeks its inclusion will yield the higher total compensation for both workweeks. After thus determining the workweek to which the overlapping worktime should be allocated, the remaining workweek is treated as one in which the only compensable worktime is that falling exclusively within such workweek and outside the portion which overlaps the other workweek. Subject to this modification, the compensation due an employee for straight time and for overtime on a daily or weekly basis, whichever is appropriate, is to be computed and paid for each workweek as in workweeks when no overlap occurs. This rule, otherwise identified as a crediting rule, applies both under the Fair Labor Standards Act and under the Walsh-Healey Public Contracts Act.

The foregoing clarification of the Division's policy is believed to be better adapted for the accomplishment of its purpose, that of avoiding a requirement of double payment for hours which are worked only once.

Treatment of the problem on the basis of hours worked rather than by applying principles of crediting will, moreover, simplify computations which involve daily overtime under the Walsh-Healey Act or two-rate-of-pay situations under releases R-1913 and R-1913a. The restatement of the rule in this form is also intended to eliminate situations in which, under the language of Legal Field Letter No. 87, employees are not paid the full overtime compensation earned for all hours actually worked.

Illustration of Method for Computing Sums Due in
Overlapping Workweeks

The necessary computation may be graphically illustrated as follows:



In the above diagram, 1 and 2 represent the last workweek on the old schedule and the first workweek of the new schedule, respectively; A, B, and C represent hours of work in the "two-week" period, B representing the overlapping worktime that is to be counted in one of the workweeks only.

(a) Compute compensation for each workweek in the usual manner, counting A and B together as the hours worked in workweek 1, and C alone as the hours worked in workweek 2. Add the totals.

(b) Compute compensation for each workweek as in (a), counting A only as the hours worked in workweek 1 and B and C together as the hours worked in workweek 2. Add the totals.

(c) To determine whether the overlapping worktime should be allocated and compensation computed as in (a) or as in (b), compare the final results of the two computations. The method yielding the greater amount is the one to be used.