

FLSA-490

July 6, 1971

This is in reply to your letter of May 3, 1971, in which you ask how overtime is to be computed in the several situations presented. You illustrate all but the last question with an arithmetical example and our answers are in relation to these illustrations. The questions are answered in the order asked.

1. Is it legal to pay an employee overtime at the rate he works the overtime, when he works at more than one rate of pay, and on the average rate for the week on his incentive earnings?

Answer: The arithmetical illustration given in connection with this question is that of an hourly rated employee paid daily overtime (after 8 hours per day) at the hourly rate in effect at the time the daily overtime is worked. If the employee is employed pursuant to section 7(g)(2), he has been properly paid for the hourly rate portion of his daily overtime. See Interpretive Bulletin Part 778.417(b) and 778.419. If in addition, the employee is paid an incentive bonus, he is properly paid if he receives an additional one-half his average incentive bonus rate per hour for each overtime hour worked.

2. A machine operator is paid a production bonus which is computed daily and overtime (after 8 hours per day) is paid on the average hourly rate for the day. The same employee is also the set-up man and is paid a weekly bonus for such set-up work based on the production of the department. Since it is not practical to pay overtime at the daily average rate for this type of work, the overtime is paid at the average hourly rate for the week on just this job. Is it legal to pay an employee on this basis?

Answer: The arithmetical illustration given in connection with this question is that of an employee being paid daily overtime for hours worked in excess of 8 per day on the average hourly earnings for the day as machine operator if the daily overtime is worked as a machine operator. If the daily overtime is worked as a set-up man, daily overtime cannot be computed until the employee's average hourly bonus rate can be determined from the departmental bonus. However, once the set-up bonus is determined, the employee is then paid for his daily overtime on set-up work. If the employee is employed pursuant to section 7(g)(2), and is paid as illustrated, he has been properly paid.

3. This question asks, "...Where Sunday is the legal overtime and also the Sunday premium time, should the Sunday premium time be used to affect the overtime rate...?"

Answer: In your example, the basic hourly rate has been increased by night premium and foreman's pay. In order to exclude the premium pay for Sunday work from the regular rate, the employer must pay not less than time and one-half the bona fide rate applicable to like work when performed during non-overtime hours on other days, in accordance with section 7(e)(6) of the Act and IB 778.203(b). This principle applies regardless of whether the hours worked on Sunday coincide with daily or weekly overtime hours.

4. This question is similar to question No. 3, the only difference being that 44 hours were worked, of which 4 hours overtime were worked on Sunday.

Answer: The same principle stated in the answer to question No. 3 applies.

5. This question states "There are occasions when the overtime paid does not coincide with Sunday premium, as for example, an employee who is paid overtime for working on his scheduled day off."

Answer: The same principle stated in the answer to question No. 3 applies.

6. Your last question is "Can time and one-half overtime pay for Sunday work at the employee's base rate not be used to affect his rate for overtime pay purposes when the average rate for the week is higher?"

Answer: The same principle stated in the answer to question No. 3 applies.

Sincerely,

Horace E. Menasco
Administrator