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U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D. C. 20210

26 CD 601
26 CD 702.12

Nov 26, 1971

This is in further response to your letter of September 8, 1971, in which you ask about the computation of overtime pay under the Fair Labor Standards Act.

In your first example you cite a situation where an employee receives a straight salary for all hours worked plus additional commissions. You are correct in your assumption that the employer may compute overtime pay by using the coefficient table (WH-134) so long as the employee receives at least the minimum wage for all hours worked in the workweek. It is also explained in a letter to you dated December 11, 1968 (copy enclosed).

In your second example an employee works 30 hours at $2.00 an hour for inside counter selling work and also receives $20.00 in commissions for 20 hours of outside selling work. In this case the employee is receiving different rates of pay for two different types of work. Section 778.115 of Interpretative Bulletin, Part 778, explains how overtime pay is computed where an employee is working for two or more rates of pay. As you will note, the employee's rates of pay may not be less than the minimum wage. Thus, the employee's straight time earnings in your example would be $92.00 (30 x $2.00 + 20 x $1.60). His weighted average hourly rate would be $1.84 ($92.00 ÷ 50). Additional premium overtime pay for the hours over 40 a week would equal $9.20 (10 x $.92), and total pay for the week would be $101.20 ($92.00 + $9.20).

Sincerely,

Horace E. Menasco
Administrator

Enclosure

WH-150

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