

FLSA-1401

July 18, 1973

This is in reply to your letter of June 12, 1973, regarding "call-back" pay.

You state that, in our letter to you of May 25, 1973, we drew a distinction between "call back" payments made to full-time or regular employees and "call back" payments made to part-time or irregularly scheduled employees. This resulted from our understanding, gained in our telephone conversation with you on May 8th, that the full-time or regular employees performed "call-back" work only after having worked 8 hours per day, or over 40 per week or on their regular day of rest, or outside their normal work schedule. It is our position that, if the "call-back" work of a group of full-time employees is normally performed by the group outside of the normal or regular working hours, that is, the employees normally work 8 hours a day or 40 a week before they are "called-back", the premiums paid for the "call-back" work will be considered excludable from the regular rate pursuant to sections 7(e)(5) and 7(e)(6).

With respect to the employees who do not have a regular schedule of work and work only when "called-back" or pre-notified that work will be available, we considered the "call-back" rate of pay to be a straight time wage. As we understand the situation, an employee without a regular schedule of work may not know on a Sunday whether he will work on Monday. If "called-back" to work on Monday, he is paid the "call-back" wage (\$6 an hour) irrespective of when the work is performed that day. If on Monday he is told that work is available for him on Tuesday, he would be paid \$4 an hour for the first 8 hours and time and one-half this rate should he work longer than 8 hours. Thus, under the pay practice of your client, it is possible, although perhaps not probable, that an employee could work 5 or more 8 hour days in a week and be paid "call-back" pay for all such hours. Additionally, should the employee work more than 8 hours per day or more than 40 hours per week, it is possible, under the pay plan, that he would be paid the "call-back" rate of pay both for the hours worked before and after 8 a day.

As you suggest, your client may also adopt a pay plan for paying overtime on the basis of the average hourly rate of pay. He may also, of course, choose not to utilize section 7(j) for his part-time employees and thus avoid the problem of daily overtime pay.

Sincerely,

Ben P. Robertson
Acting Deputy Administrator
Wage and Hour Division