

FLSA-778

April 1, 1975

This is in reply to your letter of March 6, 1975, regarding the payment of overtime compensation under the Fair Labor Standards Act to a nonexempt salaried employee.

Overtime compensation, under the Act, is computed on the basis of the employee's regular rate of pay, which is the quotient of the total remuneration for his hours of work in the workweek divided by the number of hours of work for which the remuneration was paid. Where hours not worked are paid as, for example, in the case of paid holidays, vacations, and other similar occasions, neither the number of such hours, nor the amount paid, is includable in the regular rate calculation.

If an employee is given a stipulated salary with the understanding that it constitutes straight time pay for all hours he works, and if his hours fluctuate from week to week, his regular rate of pay ordinarily will vary from week to week in accordance with the number of hours worked each week. The regular rate, of course, cannot be less than the applicable minimum wage. Since straight time compensation has already been paid, such as employee must receive additional overtime compensation for each overtime hour in a particular workweek computed at not less than one-half the regular rate obtained by dividing the weekly salary by the number of hours worked in that workweek. This rule will apply where an employee works a varying number of hours, and normally receives his full salary regardless of how few the scheduled hours may be in a particular week, even though occasional disciplinary deductions for wilful absence or tardiness are made.

We have examined the copy of your pay voucher, dated March 4, 1975, submitted with your letter. Our calculations, based upon a salary of \$119 a week and the number of hours worked in each week of the biweekly pay period, indicates the legal payment due was \$250.09, whereas you received \$251.17. The difference may be attributable to the rounding out of fractional amounts in your favor.

Enclosed for your information is a copy of our Handy Reference Guide to the Fair Labor Standards Act which, in part, explains the computation of overtime pay beginning on page 18.

If you have any further questions, we suggest you contact our Area Office at 111 West Buron Street, Buffalo, New York 14202 (telephone: 716-842-3210). The people at that office will be pleased to assist you in any way possible.

Sincerely,

William Hoffman, Director
Division of Minimum Wage
and Hour Standards
Wage and Hour Division