

FLSA-762

December 10, 1975

This is in reply to your letter of November 13, 1975, in which you ask how overtime pay is to be calculated under the Fair Labor Standards Act for employees who, in addition to their regular wages, also receive a cost of living bonus.

In a telephone discussion with our staff member Brooks Sipes on November 20th, it was learned that the employees are paid on a bi-weekly basis and receive overtime pay for hours in excess of 8 per day or 40 per week. The cost of living bonus is allocated quarterly. You ask if you should pay time and one-half the bonus rate per hour or one-half times such rate where overtime was worked.

The method to be used to include retroactive pay increase in an employee's regular rate of pay is discussed and illustrated in sections 778.303 and 778.209 of the enclosed copy of 29 CFR Part 778. The following example should prove helpful in understanding the principles involved. An employee who is paid \$300 bi-weekly is determined to be due \$10 per week for each week worked in a calendar or fiscal quarter as the result of a retroactive pay increase. In one week of a bi-weekly pay period the employee worked 44 hours and 40 hours in the other. For the week in which 44 hours were worked, the \$10 weekly cost of living bonus is divided by 44 hours. The straight time bonus rate per hour is 23 cents. Since the employee has already received straight time compensation for each hour worked, he is due additional half time for the four overtime hours or 46 cents.

Sincerely,

William Hoffman, Director
Division of Minimum Wage
and Hour Standards