

## FLSA-609

July 12, 1976

This is in further reply to your inquiry of September 24, 1975, in which you presented five problems involving computation of pay due under the Fair Labor Standards Act to employees who, in accordance with section 3(t), are "tipped employees." For purposes of problem solution, you requested that we assume that overtime pay is due after 46 hours of work per week and that the employee is subject to a \$2.00 per hour minimum wage rate. Of course, as you know, the minimum wage has subsequently been increased.

For the purpose of computing overtime pay, a tipped employee's regular rate of pay includes the cash wage paid by the employer, the reasonable cost or fair value of any facilities furnished by the employer, and the tip credit taken by the employer, not in excess of 50% of the applicable minimum wage rate. Under the provisions of section 3(m), the amount of tip credit is determined by the employer, and may not exceed the value of tips actually received by the employee.

The solutions to your problems are as follows:

Problem 1. An employee received \$1 per hour in cash wages plus tips and worked 50 hours. The employee reported \$60 in tips.

Answer:

Cash wages (50 hours x \$1) = \$50

Tip credit (50 hours x \$1) = 50

Total straight time compensation \$100

Regular rate, \$100 divided by 50 hours = \$2 per hour

Overtime premium ( $1/2 \times \$2 \times 4$  hours) = \$4

Total pay \$104

Problem 2. An employee is paid \$2 an hour and reported tips of \$50 while working 50 hours.

Answer:

Cash wage (50 hours x \$2) = \$100

Tip credit - none taken

Straight time compensation \$100

Regular rate, \$100 divided by 50 hours = \$2 per hour

Overtime premium ( $1/2 \times \$2 \times 4$  hours) 4

\$104

In this case, since the employer did not take a tip credit, he may not offset the employee's tips against the overtime premium pay. Had he taken a tip credit of \$4, the employee's regular rate would be \$2.08 (\$100 cash plus \$4 tip credit = \$104, divided by 50 hours = \$2.08). If he had taken the full tip credit, the regular rate would be \$3 (\$2 an hour in cash and \$1 an hour tip credit). Of course, regardless of whether or not the employer takes a tip credit, the employee must retain all tips which, in the example given, amount to \$50.

Problem 3. An employee is paid \$1.20 per hour plus reported tips of \$80 and worked 50 hours.

Answer:

Cash wages (50 hours x 1.20) = \$60

Tip credit (50 hours x 80¢) = 40

Total straight time compensation \$100

Overtime premium ( $1/2 \times \$2 \times 4$  hours) 4

Total Pay \$104

Problem 4. An employee worked 40 hours as a waiter for which he was paid \$1.20 an hour plus reported tips of \$40. In the same workweek he worked 10 hours as a banquet waiter at \$1.20 an hour with no tips, but his share of the mandatory service charge was \$60.

Answer:

Cash wages, dining room (40 hours x \$1.20) = \$48

Tip credit, dining room (40 hours x 80¢) = 32

Cash wages, banquet (10 hours x \$1.20) = 12

Share of service charge at banquet = 60

Total straight time compensation \$152

Regular rate, \$152 divided by 50 hours = \$3.04

Overtime pay due ( $1/2 \times \$3.04 \times 4$  hours) = 6.08

\$158.08

It is assumed that in this case the employer has taken the tip credit. Since the employee in this example is working overtime hours, he must receive at least the minimum wage for each hour worked and the greater compensation received in his second job (as a banquet waiter) cannot be used to make up the wage deficiency in his first job (as a waiter).

Problem 5. An employee works 50 hours as a bellhop at \$1.20 an hour plus reported tips of \$20, and receives \$108 as his share of mandatory service charges for special convention groups. In the same workweek he works 10 hours as a desk clerk at \$1.20 per hour.

Answer:

Cash wages, bellhop (50 hours x \$1.20) = \$ 60

Share of service charge in cash = 108

Tip credit = 20

Cash wages, desk clerk (10 hours x \$1.20) = 12

Total straight time compensation = \$ 200

Regular rate, \$200 divided by 60 hours = \$ 3.33

Overtime pay due ( $1/2 \times \$3.33 \times 14$  hours) = 23.31

Total pay = \$223.31

In this case, if the employer did not take the tip credit, the straight time compensation would be \$180, and the regular rate \$3 an hour.

It may be useful at this point to emphasize that the Act requires that (1) the employer must inform tipped employees about this tip credit allowance before the credit is utilized; (2) the employees must be allowed to retain all tips (individually or through a pooling arrangement) and this is so regardless of whether the employer elects to take a credit for tips received; and (3) the employer must be able to show that the employee receives at least the minimum wage in the combination of direct wages and the tip credit. In other words, employers must pay tipped employees at least half of the applicable minimum wage (from their own pockets) for each hour worked, and may take a tip credit of no more than 50 percent of the required minimum wage. In addition, the law forbids any

arrangement whereby any part of the tips of a tipped employee belong to the employer or are retained by the employer. It should also be noted that a compulsory charge for service is not a tip.

Sincerely,

Ronald J. James  
Administrator  
Wage and Hour Division