

FLSA-1416

November 4, 1976

This is in reply to your letter of October 1, 1976, regarding the application of the Fair Labor Standards Act to some of your full-time employees who desire additional part-time work for your company. Our reply has been delayed since you originally planned to meet with us on October 20th to discuss this matter.

You state you have two classifications of employees --- full-time employees who generally work during the day and assume administrative duties; and a staff of part-time employees whose responsibilities center around the events which are usually scheduled during the evening hours. Your part-time employees usually have full-employment elsewhere and attempt to augment their income by working your events. You state you have been informed by a staff member of the Department that employees employed by a single employer who conducts business under more than one name must be paid time and one-half their regular rate of pay for the combined hours worked for all companies of a single employer when such hours exceed 40 in a workweek. It is believed that simple examples may best explain the application of the Act to the situations you describe.

The "X" company also owns and operates the "Y" and "Z" companies. Employee "A" is employed by the "X" company as a bookkeeper whose regular rate of pay is \$5 an hour. Employee "A" wants to work some of the events held by company "Y". If employee "A" works 40 hours for company "X" and 15 hours for company "Y", employee "A" is due 15 hours of overtime pay if covered by the Act. However, an employer is not required to pay the same wage rate for different kinds of work. An employer and an employee may agree, for example, that the rate of pay for bookkeeping work is \$5 an hour and the rate of pay for selling tickets at special events is to be \$3 and hour. In this case, payment for overtime may be made as explained in section 778.115 of 29 CFR Part 778, copy enclosed. Alternatively, you may wish to consider section 778.419.

On the other hand, assume company "X" has no connection, directly or indirectly with company "Y". In such a case, employee "A" may work 40 hours for company "X" and 8 hours for company "Y" and no overtime compensation would be due under the Act.

When your attorney's schedule permits, we will be pleased to meet with you and counsel, and any other corporate officials you may wish to be present, to discuss more fully the application of the Act to your various activities.

Sincerely,

Ronald J. James
Administrator

Enclosure