

FLSA-1399

July 1, 1977

This is in reply to your letter, dated April 26, 1977, asking if a group compensation method and trip rate plan by your client would be acceptable under the Fair Labor Standards Act.

As stated in your letter the group is composed of 3 members: a driver a relief driver/helper, and a helper. This group's working time does not commence until all three are at the job at the same time, except when the work is performed in the warehouse, where a time clock is used to record their arrival and quitting times. As explained in section 785.14 of 29 CFR Part 785, copy enclosed, where an employee is engaged to wait for employment, such time is considered as compensable hours of work. However, where an employee voluntarily comes in before the regular working time and does not perform any work, such time is not compensable. When the group is moving household goods by truck, the employer counts only the hours when the truck is moving as working time and any other time is considered rest time. Section 785.18 states that, where rest periods of 5 to 20 minutes occur, such time must be included in the hours of work and are compensable. We agree with your statement that, since the employees are moving goods by truck in interstate commerce, the complete overtime exemption provided by section 13(b)(1) would be applicable. The additional information supplied by telephone to this office on May 13, 1977, was that the employees' hourly rates of pay are between \$5 and \$6.50 an hour.

As you know the overtime exemption for trip rates in section 13(b)(11) of the Act applies to "any employee employed as a driver or driver's helper making local deliveries ***". Since you state that the employees would be involved in making trips outside the state, the exemption would not be applicable.

The Act generally requires that an employer pay not less than \$2.30 an hour to each employee covered by the minimum wage provisions and one and one-half times the regular rate for each hour of overtime work. Therefore, if the total pay of an employee, exempt from the overtime requirements of the Act, when divided by the total hours of work, including the time discussed above, equals or exceeds the minimum wage, the compensation paid to the employee would be in compliance with the Act. Based on the information provided in your letter, your client's pay plan would be acceptable.

However, if the firm has any Federal Government contracts subject to the Contract Work Hours & Safety Standards Act, copy enclosed, use of such a plan would not be permissible. This statute requires that laborers or mechanics engaged in contract work be

paid one & one-half times their basic rates of pay for hours worked in excess of eight hours in a calendar day or 40 hours in a workweek, whichever is greater.

Sincerely,

Administrator

Enclosures