

## **FLSA-959**

November 7, 1977

This is in reply to your letter of August 1, 1977, in which you make inquiry concerning Christmas bonuses and the law governing such bonuses.

The Fair Labor Standards Act (also referred to as the Wage and Hour Law) is the Federal law which establishes minimum wage and overtime pay standards. It requires that the regular rate of pay, upon which overtime is based, must include all remuneration for employment except the seven types of payments specified therein. Among these exclusions are "sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency".

The application of the above quoted provision of section 7(e)(1) of the Act is discussed in section 778.212 of the enclosed copy of Interpretative Bulletin, Part 778. If a bonus paid at Christmas or any other special occasion is in the nature of a gift it maybe excluded from the regular rate under section 7(e)(1) as explained in section 778.212(e) even though it is paid with regularity so that employees are led to expect it, and even though the amounts paid to different employees vary with the amount of salary or hourly rate of such employees so long as the amounts are not measured by or dependent upon hours worked, production or efficiency.

If you have further questions you may wish to get in touch with our Area Office at 528 South 5th street, 2nd floor, Springfield, Ill. 62701, telephone 217/525-4060. That office will be pleased to assist you in every way possible.

Sincerely,

Brooks N. Sipes  
Division of Minimum Wage and  
Hour Standards