

FLSA-965

May 4, 1978

This is in reply to your letter dated April 19, 1978, asking if cost of living adjustments to wages are excludable from the regular rate of pay under section 7(e)(2) of the Fair Labor Standards Act as other similar payments to an employee which are not made as compensation for his hours of employment.

Section 7(e) of the Act provides that the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include payments made pursuant to section 7(e)(1) through 7(e)(7).

Section 7(e)(2) as explained in sections 778.216 through 778.224 of 29 CFR 778, copy enclosed, excludes "Payments made for occasional periods when no work is performed due to vacation, holiday, illness * * *; and other similar payments to an employee which are not made as compensation for his hours of employment ***". Since COLA are adjustments to the employee's working rate of pay, they are not the type of payments referred to in section 7(e)(2) and must, therefore, be included in the regular rate of pay for purposes of computing overtime compensation under the Act.

Sincerely,

Xavier M. Vela
Administrator

Enclosure