

FLSA-1420

October 3, 1978

This is in reply to your correspondence of September 11, 1978 to Secretary of Labor Marshall on behalf of ***, concerning the payment of premium overtime compensation under Federal law.

We have considered your constituent's comments under the provisions of the Fair Labor Standards Act, the Federal law of most general application concerning wages and hours of work. The major highlights of the overtime pay provisions of this law are contained in the enclosed copy of WH Publication 1325 which you may wish to send to Mr. ***.

The Act takes a single workweek at its standard and does not permit averaging of hours over 2 or more weeks. Thus, to use the example in your constituent's letter, if a covered and non-exempt employee works 36 hours one workweek and 45 and a quarter hours the next workweek, the employee must receive time and one-half the regular rate of pay for the 5 and a half hours worked over 40 in the one workweek. This is a long established principle which has been upheld by the courts.

Also, the language of the Act and controlling court decisions make it clear that employee cannot waive the statutory right to be paid overtime compensation for all hours worked in excess of the applicable statutory maximum hours standard. In Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, the Supreme Court said that policy considerations of Congress in enacting the Fair Labor Standards Act forbids waiver of basic minimum and overtime wages under the Act. The court stated further that, while in individual cases hardship may result, the restriction will enure to the benefit of the general class of employees in whose interest the law was passed and so to that of the community at large.

Sincerely,

Xavier M. Vela
Administrator

Enclosure