

## FLSA-880

July 17, 1979

This is in reply to your letter of June 4, 1979, requesting a ruling under the Fair Labor Standards Act on a proposed pay plan.

The proposed pay plan concerns the computation of a pieceworker's overtime pay. You state the rate to be used for overtime pay computation will be calculated each week by dividing the amount earned by an employee for piecework completed during the first 40 hours by 40, and one and one-half times this rate will be paid for each hour worked in excess of 40 in the workweek.

Generally, as explained in section 778.111 of 29 CFR Part 778, copy enclosed, a pieceworker's regular rate of pay is computed by dividing the employee's total earnings for the workweek by the number of hours worked in the workweek. The regular rate, so determined must not be less than the applicable minimum wage. It is this "regular rate" upon which an employee's overtime compensation is to be computed.

However, you propose to use the piecework earnings of the first 40 hours to establish a regular rate of pay for hours worked in excess of 40 hours in a workweek. Of course, the regular hourly rate of pay so determined must not be less than the applicable minimum wage. It is this regular hourly rate of pay multiplied by one and one-half which will be used to compute an employee's overtime pay for each hour of work in excess of 40 hours. Since piecework earnings no longer affect an employee's "regular rate" of pay, it is our opinion that the proposed pay plan will comply with the Act's overtime pay requirements.

With regard to the copy of the operational procedures for the posting department which you include with your letter, we believe a few comments are warranted. It is stated therein, that all overtime must be authorized by the management. We wish to point out that work not requested or authorized but suffered or permitted is compensable hours of work, as explained in section 785.11 of 29 CFR Part 785, copy enclosed.

It is also stated that deductions will be made from an employee's pay for posters claimed but not posted and for failure to turn in flags within a reasonable period of time. While this law does not prohibit disciplinary deductions, such deductions which reduce an employee's pay below the applicable minimum wage or cut into the required overtime compensation which may be due, are illegal as explained in sections 531.36 and 531.37 of 29 CFR Part 531. For example, where an employee claimed to have posted 26 boards in 40 hours but only posted 25 boards a deduction of \$20 would be made from his or her pay. The employee's pay prior to the deduction is \$125 and after it, it is \$105 ( $\$125 - \$20 = \$105$ ), this amount when divided by 40 hours of work equals \$2.625 per hour. Since this amount is less than the minimum wage a violation of the Act's monetary provisions has occurred. However, a deduction of \$9 could be made since this would not reduce the employee's pay below the minimum ( $\$125 - \$116 (40 \times \$2.90 = \$116) = \$9$ ).

Sincerely,

Herbert J. Cohen  
Assistant Administrator

Enclosures