

FLSA-632

December 10, 1979

This is in reply to your letter of October 17, 1979, requesting an opinion on whether two methods of wage payment to agricultural employees are in violation of the Fair Labor Standards Act.

Under the first wage payment plan, the migrant farmworkers are paid by the hour to plant a crop. Their hourly wage is set by the growers at \$2.90 an hour. However, the workers receive payment each week at a \$2.80 an hour rate, and are told that the \$.10 per hour is being held back as a bonus. They are to be paid the bonus at the end of the crop season provided they stay and work until the completion of the harvest. Under the second plan, the farmworkers are hired to pick a crop on a piece rate basis of \$.25 per hamper. On their weekly payday, the workers receive payment at a rate of \$.20 per hamper. They are told, again, that the additional \$.05 per hamper is to be paid them at the completion of the harvest provided that the workers stay and work until the season's completion. At 20 cents per hamper their hourly rate would be approximately \$2.36 based on the example you give.

The Fair Labor Standards Act requires that not less than \$2.90 an hour (increasing to \$3.10 an hour effective January 1, 1980, and to \$3.35 an hour effective January 1, 1981), be paid to every covered worker employed in agriculture by an employer who used more than 500 man-days of farm labor in any calendar quarter in the previous calendar year. A "man-day" is defined as any day during which an employee performs agricultural labor for not less than one hour. A farm that employs about 7 full-time employees will probably use more than 500 man-days of farm labor. The employment of a larger number of temporary workers during a few weeks could also bring a farm over the 500 man-days. The overtime pay requirements of the law do not apply to agriculture workers.

There is nothing in the law which prohibits an employer from compensating employees on a piece rate basis. It only requires that if such a method is used, the total compensation earned by the agricultural employee must yield at least the applicable minimum wage for all hours worked in the workweek.

There is no provision in the law which governs the length of the pay period or the time or frequency with which wage payments must be made. The Act merely requires that when employees are paid on the regular payday, such payment must be in compliance with its minimum wage and overtime pay requirements. Each workweek within the pay period must be taken separately in determining compliance with the statutory pay requirements. The requirements of the Act will be satisfied if the pay day is as soon after the workweek, or work period, as is practicable.

Based on the information provided in your letter, it is evident that both the wage payment plans would violate the minimum wage provisions of the Fair Labor Standards Act since

the employees' wage would be below the minimum wage required to be paid on each regular pay day.

If you have any further questions, you may wish to contact our Wage and Hour Area office at Room 465, U.S. Court House, Ohio & Pennsylvania Streets, Indianapolis, Indiana 46204 (telephone: (317) 269-7163). The people in that office will be pleased to assist you in any way possible.

Sincerely,

C. Lamar Johnson
Deputy Administrator