

FLSA-338

January 18, 1980

This is in reply to your letter concerning your company's plan to provide additional compensation to employees who qualify for exemption from the minimum wage and overtime pay provisions of the Fair Labor Standards Act under section 13(a)(1) of the Act. We regret the delay in responding to your inquiry.

Your company has a plan by which exempt employees receive credit for hours worked in excess of 40 in a workweek. These hours, called "bank credit hours" (BCH) may be used for personal time off and for sick leave. If there are no BCH hours or the BCH hours are insufficient to cover the number of hours missed because of sickness, negative hours will appear in the employee's account. Negative hours will not be allowed for any other purpose. Any negative hours in the employee's account on October 31st of each year will be cleared and the amount will not be due the company. Any positive hour remaining in a employee's account on October 31st of each year will be paid to the employee. It would appear from the information you provide that the status of an otherwise exempt employee would not be affected by the implementation of this plan.

However, it should be noted that one test for exemption under section 13(a)(1) of the Act as outlined in Regulations, Part 541, a copy enclosed, is that the employee be paid "on a salary basis". See specifically the discussion contained in section 541.118 of the regulations dealing with the salary basis of payment and the types of deductions which may be made from an otherwise exempt employee's salary. As noted in section 541.118(a)(2) of the regulations, deductions may be made from an exempt employee's salary for a day or longer when he absents himself for personal reasons. Therefore, in the operation of your company's plan if an otherwise exempt employee is absent for personal reasons, and if there are no hours or insufficient hours in the employee's account to cover the absence, deductions from the employee's salary may be made only for a full day or days missed by the employee for personal reasons.

If after reading the enclosed material you have any further questions, concerning this matter, you may find it more convenient to get in touch with our office at U.S. Custom House, Room 228, 721-19th Street, Denver, Colorado 80202, (Telephone:303-837-4405). That office is responsible for the administration of the Act in the State of North Dakota, and will be pleased to offer every possible assistance.

Sincerely,

J. Dean Spear, Acting Director
Division of Minimum Wage and Hour Standards

Enclosure