

## FLSA-792

January 16, 1981

This is in reply to your letter of December 28, 1981, requesting information concerning overtime pay.

We have considered your 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 this law regarding overtime are contained in the enclosed 29 CFR Part 778.

This law requires that all covered and nonexempt employees be paid at least a minimum wage of \$3.35 an hour for all hours worked and overtime pay of one and one-half times the regular rate of pay for all hours worked over 40 in the workweek.

The regular hourly rate of pay of an employee on which overtime pay is computed is determined by dividing the total remuneration for employment (except the statutory exclusions provided by sections 7(e)(1) through 7(e)(7)) in any workweek by the total number of hours actually worked by the employee in that workweek. As indicated in section 778.207(b) of the enclosed bulletin, shift differentials must be included in an employee's regular rate of pay. This is so even if there is a collective bargaining agreement stating otherwise. The language of the Act and the controlling court decisions make it clear that an employee cannot waive his or her statutory right to be paid in accordance with the minimum wage and overtime pay provisions of the Act. In Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, the Supreme Court of the United States said that the policy consideration of Congress in enacting the Fair Labor Standards Act "forbids waiver of basic minimum wage and overtime wages under the Act."

If you have any further questions, you may wish to contact our Wage and Hour Area Office at Room 601, Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202 (telephone: (414) 291-3585). The people in that office will be pleased to assist you in any way possible.

Sincerely,

Brooks N. Sipes, Chief  
Branch of Wage and Hour Standards