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Thank you for your letter requesting an opinion as to whether the method by which one of your member firms compensates his or her employees complies with the monetary requirements of the Fair Labor Standards Act. You state that the employees are automobile mechanics who are exempt from the overtime compensation requirements pursuant to section 13(b)(10) of the Act.

You request that we consider the following facts. An automobile dealer employs bona fide mechanics in the service department. These mechanics receive a 50% commission on all service work performed and, are paid weekly. The mechanics' hours of work are recorded on a time clock. Each workweek the mechanic(s) receives the Federal minimum wage by way of his or her commissions or a subsidy provided by the employer. Should the commissions exceed the minimum wage for that workweek, the employee would receive the total commissions earned (less any subsidy). If a minimum wage subsidy is paid, it is carried forward and charged against commissions earned but not paid in subsequent workweeks. In these future workweeks, the subsidy or offset is credited against the commission earnings in excess of the required Federal minimum wage for that workweek. The employer's records show that the minimum wage subsidy has been satisfied or fully offset within 30 days of the subsidy occurrence. However, in no case would the subsidy balance owing be carried forward for more than one year. The employer's records would also show that employees who have left the dealership with a subsidy balance owing have done so with no further claim against them for this balance and in fact received the guaranteed minimum wage for the final pay week. The employer has documentation to show that in every week of employment every mechanic has received no less than the Federal minimum wage for all hours worked. You ask whether an employee employed under the above facts has receive his or her minimum wage earnings "free and clear" each workweek even when a subsidy or offset is noted for that workweek.

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When compensating commission salespersons exempt from the overtime pay requirements of the Act, employers may adopt pay arrangements whereby such employees are guaranteed not less than the applicable minimum wage for each hour of work during the settlement period. The only requirement is that the employee receive "prompt payment" of the minimum wage covering all hours worked during the settlement period. Where an employer advances funds to a commission salesperson to satisfy the minimum wage requirement, this amount may be recovered from excess commissions earned in a subsequent settlement period.

In your member firm's case the settlement period used to determine the total commissions earned is one workweek. Since the commission mechanics receive not less than the minimum wage for each hour of work during that period, it is our opinion the pay plan complies with the Act's monetary requirements.

Sincerely,

Henry T. White, Jr.

Henry T. White, Jr.
Deputy Administrator