

FLSA-725

July 1, 1982

Thank you for your letter of April 24, 1982, asking whether the method utilized by *** compensating some of its employees for overtime hours of work is permissible under the Fair Labor Standards Act.

You state that certain employees are paid on a salary basis. If the employee works in excess of 40 hours in a workweek, the salary is divided by the number of hours worked to determine the regular rate of pay. The Center elects to pay, however, an amount equal to the regular rate times each overtime hour worked, rather than paying one-half the regular rate for each overtime hour of work.

You state you have reviewed Section 778.114 of 29 CFR Part 778 and noted in particular the statement that "Where all the legal prerequisites for use of the 'fluctuating workweek' method of overtime payment are present, the Act, in requiring that 'not less than' the prescribed premium of 50 percent (in addition to the straight-time already paid) for overtime hours worked be paid, does not prohibit paying more." It is the Center's and your opinion that the method described above results in employees receiving more than time and one-half for overtime hours of work.

Based on the information provided in your letter, it is our opinion that the overtime pay compensation plan used by *** complies with the Act's overtime pay requirement.

Sincerely,

William M. Otter
Administrator