

## **FLSA-915**

September 6, 1984

This is in further reply to your letter of August 3, in which you request an opinion as to whether your firm's proposed method of compensating employees for time spent in undergoing training in Computer Aided Design (CAD) complies with the Fair Labor Standards Act (FLSA).

In recent negotiations between the company and the union representing its employees, both management and labor expressed a desire to seek a way to accelerate the training effort in CAD, an emerging technology in the drafting designing field. The union is interested in encouraging the company to train existing staff so that their skills would not become obsolete. Because of the nature of the equipment involved, there are no schools available where such training can be obtained.

Generally, you propose to establish a "training rate" to cover periods during which employees are assigned to training and to pay one and one-half times such rate for any hours worked over 8 in a day or 40 in a workweek spent on training. Although you outline two proposals for achieving this end in your letter, you indicated in a telephone conversation with a member of my staff that after mailing the letter you realized that the first proposal would not be viable. You also indicated that the statement in your letter that "the training will be one hour company time, one hour employee time (daily)" should not be considered. Recognizing this, we shall discuss your other proposal after a brief discussion of the law.

The principles for computing overtime pay based on an employee's regular rate of pay are discussed in sections 778.107 through 778.122 of 29 CFR Part 778, copy enclosed. As indicated in section 778.115, where an employee in a single workweek works at two or more different types of work for which different nonovertime rates of pay have been established, the regular rate for that week is the weighted average of such rates. That is, the total earnings from all rates are divided by the total number of hours worked in the workweek. The employee would then be entitled to receive one-half the resulting average hourly rate for the hours worked in excess of 40.

Section 7(g)(2) of the Act provides that an employee who performs two or more different kinds of work for which different straight-time hourly rates of pay are established may agree with his/her employer in advance of the performance of the work that (s)he will be paid during overtime hours at a rate of not less than one and one-half times the hourly nonovertime rate established for the type of work being performed during such hours. This method of payment is explained further in sections 778.417 and 778.419. As explained in the latter section, one of the requirements which must be met for a section 7(g)(2) agreement to be bona fide is that there be established straight-time hourly rates of pay for the different kinds of work. In this regard, employees undergoing CAD training are considered to be performing a different kind of work from their regular drafting

designing work. Therefore, in connection with the second proposal in your letter, if all the requirements in sections 778.417 and 778.419 are met, any overtime hours worked by employees in CAD training could be compensated for at a rate of not less than one and one-half times the "training rate" rather than at the rate established for their regular work. Of course, any overtime hours worked by employees on their regular drafting designing work must be paid at one and one-half times the rate established for their regular work rather than at the "training rate".

We trust the above is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us again.

Sincerely,

William M. Otter  
Administrator

Enclosure