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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

QUESTIONS AND ANSWERS (NO. 4)

(IMPORTANT NOTE: Letters such as the accompanying were written in response to specific requests for information, and each answer has been made on the basis of the particular circumstances involved. They should not be construed as covering cases that might be regarded merely as similar.)

A New York exporter asked if translators in his employ came within the definition of "professionals."

The General Counsel's Office replied:

"Enclosed you will find a copy of our regulations Part 541 relating to the definition of 'professional.' If your translators fall within this definition, the questions asked in your letter will be answered. If this definition does apply, they will be subject to all of the provisions of the Fair Labor Standards Act. The Administrator has no authority to exempt anyone from the provisions of the Act.

"In answer to your question whether overtime must be paid for all hours in excess of 39 hours per week where that is the normal workweek: the Act requires that hours in excess of 44 worked during any workweek be compensated at a rate at least one and one-half times the regular rate of pay."

A salt workers' union of Texas asked an opinion on overtime provisions of the Fair Labor Standards Act.

The General Counsel's Office replied:

"The Fair Labor Standards Act at present merely requires that all hours in excess of 44 be compensated at at least one and one-half times the regular wage rate.

"Section 18 states that the Act shall not justify any employer in reducing wage paid by him which is in excess of the applicable minimum wage under the Act. It is our opinion that 'wage' as used in Section 18 means the hourly wage. Thus, if an employer does not reduce this hourly wage but does reduce, as the Act intended that he should, the number of hours worked to 44 or less, he has not violated the Act.

"You are cautioned, however, that the above merely is our best opinion and that any such opinion may or may not be the same as that entertained by a court called upon to construe the provisions referred to above."

A tool company of Dayton, Ohio, sought several opinions regarding the FLSA. The General Counsel's Office replied:

"Specifically answering your questions:

"1. The law requires you to pay overtime for hours worked in excess of 44 per week.

"2. The law requires overtime to be paid for all hours in excess of 44 per week. The fact that an employee was absent or ill during the previous week does not affect this statutory requirement.

"3. Section 3 (g) of the Act defines 'employ' to include 'to suffer or permit to work.' Sections 6 and 7 are, therefore, applicable where the employee is suffered or permitted to work."

A furniture manufacturer of Brooklyn, N. Y., wanted information about the calculation of overtime. Paul Sifton, Deputy Administrator, replied:

"The overtime provisions of the Fair Labor Standards Act are explained in detail in the Regulations on Records, copy of which I am enclosing.

"To take a hypothetical case based on the facts mentioned in your letter, suppose that a 'springer' in a furniture upholstering factory completed 18 suites in 48 hours at \$1.75 per suite. His total compensation for the 48 hours at the piece-work rate would, therefore, be \$31.50. His average hourly rate (found by dividing the total compensation for the 48 hours by the number of hours) would be something over 65½ cents. His compensation at the regular rate of 66 cents (a fraction over 1 cent is raised to the next higher cent) would be \$31.68 (48 times 66). The extra compensation attributable to the excess of the overtime rate over the regular rate would be \$1.32 (four times one-half of 66 cents)."

A query from Harrisburg, Pa., about handicapped workers was answered by Merle D. Vincent, chief of the Hearings and Exemptions Section, as follows:

"Under the Act, the Administrator has no authority to exempt workers who are merely slow or inefficient from the minimum wage provisions of the Act as handicapped. A handicapped worker is defined as one 'whose earning capacity is impaired by age or mental deficiency or injury.'"

A letter from a lumbering concern in Virginia was thus answered by the General Counsel's Office:

"In my opinion, the Fair Labor Standards Act does apply to a sawmill that cuts lumber in Virginia and sells the lumber to a concentration yard in the State

where the lumber, or a substantial part of it, is shipped out of the State.

"Similarly, I think the law applies to a planing mill that reworks on a per-thousand-foot basis lumber, a substantial part of which is shipped in interstate commerce, whether or not it owns, buys or sells any lumber."

A State official of New Hampshire inquired about any emergency provision of the FSLA which might be applied to the situation following the New England hurricane, in which tens of thousands of trees were felled.

The General Counsel's Office replied:

"Regarding an emergency situation resulting from the hurricane, the statute does not confer upon the Administrator any power to vary the provisions of the Fair Labor Standards Act on account of such emergency situation. In an earlier draft of the bill, there was a provision authorizing the administrative body to issue regulations providing for overtime employment in periods of 'emergency work.' This provision, however, was omitted from the bill as it emerged from the conference and as it was finally passed."

In reply to several inquiries regarding learners, Mr. Vincent replied:

"The Administrator has directed that early formal public hearings be held for those industries affected by the Fair Labor Standards Act for the purpose of determining the need for learners and the type of regulations best suited to an effective regulation of such employment.

"I am sure you will understand that, inasmuch as Congress has fixed the minimum wage rate, which begins at the low figure of 25 cents per hour, the Administrator cannot make exceptions or exemptions from the law except upon adequate facts showing the necessity for such exemption, and then under such regulations as will protect workers and also employers in the industry who are paying the legal minimum rate or more."

A Muskogee, Okla., concern asked for information on the status of "executive." The General Counsel's Office replied:

"Enclosed you will find our regulations, Part 516, with Explanations, and Part 526 relating to seasonal industries, also Part 541 defining 'executive', etc. We trust this material will answer the questions contained in your letter.

"You will note that it will be necessary for a record of the hours worked to be kept with respect to each employee. It is not within the province of the Wage and Hour Division to state what courts may consider to be sufficient evidence of any fact. However, it is suggested for your own protection, in the event of civil suits by employees under Section 16 (b) of the Act that records kept of hours worked be as clear and convincing as possible. Evidence sufficient for your protection against suits under Section 16 (b) will be sufficient for our purposes."

An inquiry regarding piece work from Dacatur, Alabama, was answered by the General Counsel's Office as follows:

"Enclosed you will find copy of our regulations Part 516 and our Interpretative Bulletin No. 4, which we trust will answer the questions presented in your telegram.

"You will note from Section 516.4 (f) (iii) that the regular rate for piece workers for the purpose of figuring overtime compensation is computed by dividing the total wages earned at piece work for any given number of hours by that given number of hours.

"Specifically answering your question, it is not the purpose and intent of the Act to force 'a loss of employment and pay.' The Fair Labor Standards Act does not require either a reduction in wages or in hours, but requires merely that all hours worked in excess of 44 be compensated at a rate at least one and one-half times the regular rate of pay."

A Louisiana sugar cane processor sought information about his status under the FLSA. The General Counsel's Office replied:

"Employers engaged in processing sugar cane into syrup would appear to be exempt from the hours provisions of the Act under Section 7 (c). Under Sections 3 (f) and 13 (a) (6), if the grinding of cane is performed by a farmer as an incident or in conjunction with farming operations, employees engaged in such work would appear to be exempt from the provisions of the statute as employees engaged in agriculture.

"As interpreted in interpretative bulletin No. 1, the Act, does not cover plants where the employees work on raw materials derived from within the State and where none of the product of the plant moves in interstate commerce.

"Without a more complete statement of the facts relating to any particular situation, it is impossible to state definitely whether or not particular activities are covered by the Act."

An inquiry from South Bend, Ind., brought this reply from the General Counsel's Office:

"You will note from an inspection of the Fair Labor Standards Act, our regulations Part 516 with Explanations, and our interpretative bulletin No. 4, copies of which are enclosed, that the Act does not require discharge of any employee nor the reduction of hours worked by him, but merely requires that the minimum wage be paid at least time and one-half of his regular rate of pay for all hours worked in excess of 44.

"Maximum annual hours are relevant only where employees are employed subject to contract between an employer and a union, in accordance with Section 7 (b) (2) of the Act."
