

B-219

Title 29, Chapter V
Code of Federal Regulations

Part 516

REGULATIONS ON
RECORDS TO BE KEPT BY EMPLOYERS
PURSUANT TO SECTION 11(c) OF THE FAIR LABOR
STANDARDS ACT OF 1938 (52 STAT. 1060)
AND EXPLANATION
OF THE RECORDS REGULATIONS

October 1939

SEE ALSO "EMPLOYERS' DIGEST", Sections 14 to 30 inclusive
and Sample Payroll Form

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

REGULATIONS ON
RECORDS TO BE KEPT BY EMPLOYERS
PURSUANT TO SECTION 11(c) OF
THE FAIR LABOR STANDARDS ACT 1/

SECTION 516.1 - RECORDS REQUIRED. Every employer subject to any provisions of the Fair Labor Standards Act or any order issued under this Act shall make and preserve records containing the following information with respect to each person employed by him, with the exception of those specified in sections 13(a)(3), 13(a)(4), 13(a)(5), 13(a)(6), 13(a)(8), 13(a)(9), and 13(a)(10) of the Act:

- (a) Name in full.
- (b) Home address.
- (c) Date of birth if under 19*.
- (d) Hours worked each workday and each workweek.
- (e) Regular rate of pay and basis upon which wages are paid. 2/
- (f) Wages at regular rate of pay for each workweek, excluding extra compensation attributable to the excess of the overtime rate over the regular rate. 2/
- (g) Extra wages for each workweek attributable to the excess of the overtime rate over the regular rate. 2/
- (h) Additions to cash wages at cost, or deductions from stipulated wages in the amount deducted or at the cost of the item for which deduction is made, whichever is less. 3/
- (i) Total wages paid for each workweek.
- (j) Date of payment.

1/ Issued under the authority contained in section 11(c), 52 Stat. 1060.

2/ These three items of information are only required when overtime is worked by the employee.

3/ This information is required only where the cash wage actually paid is less than the minimum wage required by the Act. The reasonable cost of board, lodging, and other facilities as part of wages, is defined and delimited by regulations of the Wage and Hour Division: Part 531 - (Regulations determining the reasonable cost of board, lodging, and other facilities pursuant to Sec. 3(m) of the Fair Labor Standards Act). This matter is dealt with further in Interpretative Bulletin No. 3 of the Wage and Hour Division.

* As corrected by a notice approved by the Acting Administrator on November 9, 1939, and published in the Federal Register November 10, 1939.

Provided, however, That with respect to employees specified in section 13(b) of the Act, records referred to in paragraphs (f) and (g) of this section shall not be required; and

Provided further, That with respect to employees who are specified in section 13(a)(2) of the Act and employees who are defined in regulations of the Wage and Hour Division: Part 541 - (Regulations defining and delimiting the terms "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman" pursuant to sec. 13(a)(1) of the Fair Labor Standards Act) - employers need make and preserve records containing the following information only:

- (a) Name in full.
- (b) Home address.
- (c) Occupations.

Provided further, That with respect to employees employed or purported to be employed by an employer in pursuance of the provisions of section 7(b)(1) or section 7(b)(2) of the Fair Labor Standards Act, employers shall comply with each of the following additional requirements:

(a) Keep and preserve a copy of each collective bargaining agreement which entitles or purports to entitle an employer to employ any of his employees in pursuance of the provisions of section 7(b)(1) or section 7(b)(2) of the Fair Labor Standards Act.

(b) Report and file with the Administrator at Washington, D. C., within thirty days after such collective bargaining agreement has been made, a copy of each such collective bargaining agreement. Likewise, a copy of each amendment or addition there to shall be reported and filed with the Administrator at Washington, D. C., within thirty days after such amendment or addition has been agreed upon. If any such collective bargaining agreement, or amendment or addition thereto, was made prior to the 25th day of April, 1939, a copy thereof shall be reported and filed with the Administrator at Washington, D. C., on or before the 26th day of May, 1939.

The reporting and filing of any collective bargaining agreement or amendment or addition thereto shall not be construed to mean that such collective bargaining agreement or amendment or addition thereto is a collective bargaining agreement within the meaning of the provisions of Section 7(b)(1) or Section 7(b)(2).

(c) Make and preserve a record designating each employee employed pursuant to each such collective bargaining agreement and each amendment and addition thereto.

Provided further, 4/ That with respect to employees employed in occupations in the performance of which the employee receives tips or gratuities from third persons which are accounted for or turned over by the employee to the employer, additional records containing the following information with respect to each such employee shall be made and preserved by the employer:

(a) Total hours worked each workweek in occupations in the performance of which the employee receives tips or gratuities from third persons.

(b) Total hours worked each workweek in any other occupation.

(c) Wages paid each workweek for hours worked under (a) above; provided, however, that if the employer claims as "wages paid" the amount of any gratuities or tips voluntarily paid to the employee by third persons and accounted for or turned over by the employee to the employer, such amounts must be recorded in a separate column from that in which any other compensation is recorded.

(d) Wages paid each workweek for hours worked under (b) above; provided, however, that if the employer claims as "wages paid" the amount of any gratuities or tips voluntarily paid to the employee by third persons and accounted for or turned over by the employee to the employer, such amounts must be recorded in a separate column from that in which any other compensation is recorded.

(This section, as amended, approved by the Administrator October 13, 1939, and published in the Federal Register October 14, 1939.)

SECTION 516.2 - Form of Records:

No particular order or form is prescribed for these records, provided that the information required in section 516.1 is easily obtainable for inspection purposes.

4/ Whether a contract requiring employees to account for tips is legal is a question for the courts to decide. The Wage and Hour Division is not taking a position on this question but is requiring records that will protect both employer and employee whatever the ultimate judicial decision on the validity of such contract may be.

SECTION 516.3 - Place and period for keeping records.

Each employer shall keep the records required by these regulations for his employees within each State either at the place or places of employment or, where that is impracticable, in or about at least one of his places of business within such State, unless otherwise authorized by the Administrator. Such records shall be kept safe and readily accessible for a period of at least 4 years after the entry of the record, and such records shall be open to inspection and transcription by the Administrator or his duly authorized and designated representative at any time.

SECTION 516.4 - Definitions of terms used in these regulations.

(a) Act. - The "Act" means the Fair Labor Standards Act of 1938.

(b) Hours worked. - For the purpose of these regulations the term "hours worked" shall include all time during which an employee is required by his employer to be on duty or to be on the employer's premises or to be at a prescribed workplace.

(c) Workday and workweek. - For the purposes of these regulations, a "workday" with respect to any employee shall be any 24 consecutive hours, and a "workweek" with respect to any employee shall be 7 consecutive days, provided that the workday or workweek is not changed for the purpose of evasion of provisions of the Act or any regulations prescribed pursuant thereto.

(d) Wage or wages. - For the purposes of these regulations, the term "wage" or "wages" means all remuneration for employment of whatsoever nature whether paid on time work, piece work, salary, commission, bonus, or other basis.

(e) Employee. - The term "employee" is defined by the Act (sec. 3(e)) to include "any individual employed by an employer," and the term "employ" is defined by the Act (sec. 3(g)) to include "to suffer or permit to work." It shall be the duty of each employer to make and preserve all records required under these regulations with respect to each employee employed by him, whether or not such employees perform their work in an establishment or plant operated by the employer or subject to his immediate supervision. Thus, the required records shall be made and preserved by the employer for "industrial home workers" or other employees who produce goods for the employer from material furnished by home or who are compensated for such employment at piece rates, wherever such employees actually perform their work.

(f) Regular rate of pay. - For the purpose of these regulations, the term "regular rate of pay" means -

(i) With respect to an employee paid solely on an hourly basis (i.e., receiving no additional wage whatever): the hourly wage rate at which he is employed.

- (ii) With respect to an employee employed on a daily, weekly, semimonthly, 5/ or monthly 5/ basis for a regular number of hours per week determined by agreement or custom: the average hourly rate 6/ obtained by dividing the wages 7/ earned for that regular number of hours in the workweek by that regular number of hours; and
- (iii) With respect to an employee paid on any other basis than those specified in (i) and (ii) of this Paragraph (f): the average hourly rate 6/ obtained by dividing the wages 7/ earned for the particular workweek by the total number of hours worked during that workweek.

SECTION 516.5. - Petition for amendment of regulations.

Any person wishing a revision of any of the terms of the foregoing regulations on records to be kept by employers (secs. 516.1 through 516.4) may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If upon inspection of the petition the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provisions for affording interested parties an opportunity to present their views, both in support and in opposition to the proposed changes.

(The foregoing sections, except as noted, approved by the Administrator October 21, 1938 and published in the Federal Register October 22, 1938.)

-
- 5/ With respect to an employee paid on a monthly basis, the wages earned during a workweek are computed by multiplying the monthly wage by 12 and dividing the result by 52. With respect to an employee paid on a semimonthly basis, the wages earned during a workweek are computed by multiplying the semi-monthly wage by 24 and dividing the result by 52.
 - 6/ In computing the average hourly rate fractions of less than one-half cent may be disregarded, and fractions over one-half cent should be raised to the next full cent.
 - 7/ In computing the average hourly rate all wages earned or paid during a particular workweek must be included except
 - (a) Bonuses not computed on the basis of measured work performed (e. g., bonuses for punctuality, simple Christmas bonuses, etc.)
 - (b) Extra compensation attributable to the excess of the overtime rate over the regular rate, and
 - (c) Additions to the cash wage for board, lodging or other facilities furnished by the employer.

Section 516.90 REGULATIONS ON RECORDS TO BE KEPT BY EMPLOYERS OF INDUSTRIAL HOME WORKERS, PURSUANT TO SECTION 11(c) OF THE FAIR LABOR STANDARDS ACT. - Every employer subject to any provisions of the Fair Labor Standards Act or any order issued under this Act who directly or indirectly distributes work to be performed by an industrial home worker shall be relieved of the provisions for record-keeping contained in Sections 516.1, 516.2, 516.3, and 516.4(b) of these Regulations with respect to such industrial home worker and shall, in lieu of such requirements, make and preserve, records containing the following information with respect to each such industrial home worker engaged on work distributed directly by such employer or indirectly in his interest:

- (a) Name in full.
- (b) Home address.
- (c) Date of birth if under 19.
- (d) With respect to each lot of work issued
 - (1) Date and hour on which work is given out to worker, and amount of such work given.
 - (2) Date and hour on which work is returned by worker, and amount of such work returned.
 - (3) Kind of articles worked on and operations performed.
 - (4) Piece rates paid.
 - (5) Hours worked on each lot of work returned.
 - (6) Wages paid for each lot of work returned.
 - (7) Deductions for Social Security taxes.
 - (8) Date of payment.
- (e) With respect to each week:
 - (1) Hours worked each week.
 - (2) Wages earned each week at regular piece rates.
 - (3) Extra pay each week for overtime.
 - (4) Total wages earned each week.
 - (5) Deductions for Social Security taxes.
- (f) Name and address of each agent, distributor, or contractor through whom home work is distributed.

In addition to the keeping of the above records, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by him to each worker) shall be kept for each industrial home worker, and the information required therein shall be entered by the employer or the person distributing home work on behalf of such employer each time work is given out to or received from an industrial home worker.

Except for the time necessary for the making of entries by the employer, the handbook must remain in the possession of the industrial home worker until such time as the Wage and Hour Division may request it.

A separate record and a separate handbook must be kept for each individual performing work in or about a home on any lot or amount of home work distributed.

For the purpose of this section, the term "Industrial Home Worker" means any person producing in or about a home, for an employer, goods from material furnished directly by or indirectly for such employer.

This section shall be in force and effect until repealed or modified by the Administrator.

(This section, as amended, approved by the Administrator September 23, 1939 and published in the Federal Register September 26, 1939.)