

U. S. DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington, D.C.

MAXIMUM HOURS AND OVERTIME COMPUTATION INTERPRETATION IS REVISED

A revised and expanded Interpretative Bulletin on Maximum Hours and Overtime Compensation which takes into account the reduction in the maximum workweek from 44 hours to 42 hours, made effective on October 24, 1939, under the Fair Labor Standards Act of 1938, was issued today by the office of the General Counsel of the Wage and Hour Division, U. S. Department of Labor.

The revised bulletin, still known as Interpretative Bulletin No. 4, presents concrete illustrations of computations of the regular hourly rate of pay and the amount of overtime that must be paid for all hours worked in excess of 42 in any single workweek of seven days, and clarifies generally the application of the provisions of the Act relating to maximum hours and overtime.

The bulletin specifies in clearer language than before that there is no general limitation on the number of hours that may be worked in any one workday, or on a Sunday or on a holiday without payment of overtime, provided no more than 42 hours in the aggregate are actually worked in the workweek. The bulletin also re-emphasizes that the Act takes a single workweek as its standard and permits no averaging of hours over two or more weeks and states that where an employee works 32 hours one week and 52 hours the next week, he must receive time and one-half overtime compensation for the 10 hours over 42 worked the second week, even though the average number of hours worked in the two weeks is 42.

The expansion of the bulletin makes it clear that if an employee earns a regular salary, as for example, \$23 a week, but works a fluctuating number of hours, his regular rate of pay will be the average hourly rate each week,

figured on the basis of the hours worked that week, and if he works in excess of 42 hours, his overtime will be calculated as time and half on his average hourly rate for that week.

The bulletin also makes clear that if an employee, during a single workweek, is paid at two different rates of pay, his regular hourly rate of pay, on which any overtime due him is computed, is the average hourly rate for the week, obtained by dividing the sum of the weekly earnings at both rates by the total number of hours worked in the week.

On the question, of the legality of various bookkeeping methods by which employers have resorted to adjustments or manipulations of the hourly rates of pay to avoid the overtime requirements of the Act, the bulletin incorporates in full the opinion issued by the office of the General Counsel on October 19, 1939. This states that "in our opinion an employer who will continue to work his employees in excess of 42 hours after October 24 for the same salary they now receive, but who takes the trouble to manipulate the rates of pay in order to adopt a rate upon which he may calculate the time and a half, without incurring any additional labor cost, stands in no better position than the employer who simply and frankly disregards the overtime requirements of the Act."