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

WORKWEEK TAKEN AS UNIT IN WAGE-HOUR CALCULATION

Any employer not covered by a Wage Order, who pays his employees at least $12.60 for a 42-hour workweek, will be considered to be complying with the Fair Labor Standards Act, it was announced today by the Wage and Hour Division, U. S. Department of Labor. For enforcement purposes the Wage and Hour Division is adopting a weekly, rather than an hourly, basis of determining whether an employer has complied with the law.

The principles announced in the opinion are equally applicable to employees in industries for which Wage Orders have been issued as well as to employees under the 30 cent minimum wage rates now in effect for employees engaged in interstate commerce or in the production of goods for interstate commerce. The Administrator has thus far issued Wage Orders setting minimum rates at 40 cents in the millinery industry, 32½ cents in the textile and seamless hosiery industries, and 40 cents in the full-fashioned hosiery industry. Applying the opinion released today to an employee in the millinery industry for example, an employer who pays his employees at least $16.80 for a 42 hour-workweek will be deemed in compliance with the law. The position of the Division is contained in a letter of the General Counsel George A. McNulty.

Mr. McNulty's letter follows:

"This will reply to your inquiry concerning the period of time over which wages may be averaged to determine compliance with the minimum wage provisions of Section 6 of the Fair Labor Standards Act, a copy of which is enclosed.

"In our opinion the longest period of time over which earnings may be averaged to determine whether the employer has paid wages at the rate of 30 cents an hour is a workweek and there may be no averaging of wages over two or more workweeks. Thus, if a piece-worker earns $12.00 at his piece rate for 42 hours work in one week and $14.00 at his piece rate for 42 hours work the following week, the employer has not met the requirements of the Act during the first week, even though the employee earns more than the equivalent of 30 cents an hour for the total hours worked in the two-week period. The employer will be required to pay the employee 60 cents extra (42 hours x 30 cents = $12.60; $12.60 - $12.00 = 60 cents) to make up the minimum wage for the first week. This will be true even though the employer

pays bi-weekly or at any longer interval. There is no objection, of course, to a bi-weekly, semi-monthly or monthly pay period, but a single workweek is the longest period which may be taken as the standard for the purpose of computing the amount of compensation due the employee at each pay period.

"The next question is whether the workweek will be taken as the standard period of time over which wages may be averaged or whether a period less than a workweek will be taken to determine compliance with Section 6. For enforcement purposes, the Wage and Hour Division is at present adopting the workweek as the standard period of time over which wages may be averaged to determine whether the employer has paid the equivalent of 30 cents an hour. In other words, the Division will not consider an employer in violation of the minimum wage provisions of the law if he pays at least $12.60 for a 42-hour workweek or a sum equivalent to 30 cents an hour for the number of hours worked during the workweek.

"It must be remembered, however, that this opinion is not binding upon the courts and will not protect an employer in a civil suit brought by his employees under the provisions of Section 16 (b) of the Act. We feel constrained to point out, therefore, that Section 6 of the Act requires that every employer shall pay to each of his employees subject to its provisions "not less than 30 cents an hour." The courts may thus hold in certain circumstances that an employer has not complied with the law even though the total weekly earnings for a 42-hour week equalled $12.60. The courts may hold, for example, that it is unlawful to set a time (hourly) rate of less than 30 cents an hour for any hours during the workweek even though higher earnings during other hours in the week might bring the total weekly earnings to $12.60 for 42 hours. Another example of a case the courts might hold to be a violation of the law would be where the employer does not pay anything for hours properly considered to be hours worked, such as periods of waiting time. There may be other cases where the courts might take a period less than a workweek as the standard under Section 6, but, as stated above, until directed otherwise by an authoritative ruling of the courts, the Division will take the workweek as the standard for determining whether there has been compliance with the law.

"It should be noted that the principles set forth herein are equally applicable to a minimum wage rate set by a wage order issued under Section 8 of the Act."

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