

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

"KICKBACK" DEVICES TO AVOID COST OF TRAINING LEARNERS
ILLEGAL, WAGE-HOUR GENERAL COUNSEL WARNS

Attempts of some employers to deprive their employees of the minimum wage guaranteed them by the Wage and Hour law, by resort to a "kickback" device or to an averaging of wages over two or more weeks, were declared to be illegal, in an opinion of George A. McNulty, General Counsel of the Wage and Hour Division, United States Department of Labor, which was announced today.

These efforts at evasion, made particularly in connection with the employment of learners in piecework industries, are illegal, no matter how carefully veiled, the opinion makes clear.

Under the Act the Administrator may issue Special Certificates permitting the employment of learners at less than 30 cents an hour, to the extent necessary to prevent curtailment of opportunities for employment. Some employers who have not applied for a Special Certificate, or who have failed to obtain one, have resorted to various devices in order to employ learners at subminimum wages, which today's opinion holds illegal. The opinion describes some of these devices as follows:

"New, inexperienced employees will be employed at piece rates just as are experienced workers. In the early weeks of their employment these employees may be unable to earn 30 cents an hour at their piece rates. The employer will pay them an additional sum each week to make up the 30 cents an hour minimum wage. The employer will keep a record of these additional amounts he must pay to make up the minimum. In the subsequent weeks when the employee earns in excess of 30 cents an hour at the piece rates, the employer will pay only the minimum and keep the

excess until the amounts which the employer thus withholds equal the amounts which he was required to pay to make up the minimum in the early weeks.

"Some employers have added an additional wrinkle to this device. They say to the new, inexperienced workers whom they are about to employ: 'I am going to start you off at 30 cents an hour rather than on piecework. As soon as you are able to earn 30 cents an hour at the piece rates paid experienced employees and have averaged 30 cents an hour at these rates for all the time you have worked for us, we will change you to a piece rate basis.' The employer then keeps an accurate record of the number of pieces the employee finishes each day or each week and of the piece rates paid the experienced employees for this work. As soon as the number of pieces multiplied by the piece rates equals the 30 cent hourly rate for the total number of hours the employee has worked, at which time the employee is able to earn 30 cents an hour or more on piecework, he begins to be paid what he actually earns at the piece rates.

"In our opinion both the straight piecework scheme first described and the nominal hourly rate scheme described in the preceding paragraph are violations of the Act. Section 6 requires that every employer shall pay to each of his employees subject to the provisions of the Act at least 30 cents an hour. The Act takes a single workweek as its standard and permits no averaging of wages over two or more weeks. If the employee does not earn the minimum in a particular week, the employer, in order to comply with the Act, must pay an additional sum to make up the minimum. The employee owes the employer nothing in such case; he is entitled to the additional sum by law. Efforts of an employer to get back these extra payments in later weeks are illegal, no matter how carefully veiled the attempt. The straight piecework scheme first described and the nominal hourly rate scheme described in the

preceding paragraph, which in substance is an arrangement for employment on a piecework basis, both deprive the employee of what he is entitled to by the Act. In both schemes the employer in the early weeks advances the difference between the employee's piece rate earnings and 30 cents an hour, intending to reimburse himself for such advances out of the employee's later earnings. It is consequently an illegal "kickback" device resulting in an illegal averaging of wages over a period that may run for weeks or even months.

"The principles outlined above apply equally when these or similar devices are resorted to in connection with employees who are not learners but are unable to earn the minimum in a particular week, and they apply equally to attempts to circumvent a minimum wage rate set by a wage order of the Administrator."

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