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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
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WAGE-HOUR ADMINISTRATOR DISCUSSES "CONSTANT WAGE" PLANS

In response to requests for information concerning the extent to which a "constant wage" may be maintained by firms subject to the provisions of the Fair Labor Standards Act, Colonel Philip B. Fleming, Administrator, Wage and Hour Division, U. S. Department of Labor, today released details of methods which, if not abused, would allow their users to maintain a constant wage and satisfy the strict requirements of the law.

Full discussions of the plans are contained in newly issued paragraphs supplementing Wage and Hour Division Interpretative Bulletin No. 4, which explains the maximum hours and overtime provisions of Section 7 of the Fair Labor Standards Act.

"Since the Fair Labor Standards Act went into effect in October, 1938," Colonel Fleming stated, "many employers have informed the Division that it is undesirable to pay workers in industries having seasonal fluctuations a big wage during peak weeks, then to allow this to dwindle to a few single dollars in the off-season. 'Constant wage' plans, whereby a worker's income is distributed evenly throughout the entire year, were sought for as a solution. In Congress last session legislation was introduced to allow such plans to be written into the Fair Labor Standards Act; as is well known, this legislation did not pass.

"However, we have found that some payment plans seeking a constant wage as their objective may be in accord with the present law, and if followed legitimately they will benefit employee and employer alike."

(4876)

According to the Fair Labor Standards Act, employees whose work touches any phase of production of goods which will move in interstate commerce must be paid a minimum wage of thirty cents an hour, with compensation at time and a half their regular rate of pay for all hours worked in excess of forty-two in any single week. Averaging of hours from one week to another is not permissable; a single week remains the yardstick for calculation of compensation due. Nor can pay for overtime be withheld by the employer past the payday covering the work-week or workweeks in which the overtime was earned.

"Still observing these provisions," Colonel Fleming explained, "it is possible in many cases for an employer to give his workers the benefit of constant wages. One method that would come within the present law may be called the 'time off' plan, described fully in the amended bulletin No. 4. The second method, also described in the bulletin, calls for 'prepayment' of overtime wages.

"Using the 'time off' method an employer may so control working hours in his plant that even with overtime compensation figured at the time and a half rate paychecks for workers will not exceed a stated amount. For example, where an employer wishes to set an employee's pay at a $42 limit for a two-week period and that same employee puts in overtime in the first week enough to make that week's pay total more than $21, the employer may cut the second week's working hours enough to keep the employee's salary or wage for the whole period at $42.

"This does not mean, of course, that an employee cannot work as much over-time as may be required. There is nothing in any part of the Wage and Hour law prohibiting overtime or setting any arbitrary limit on hours that may legally be worked so long as the required time and a half is paid."

The time-off plan cannot be followed when workers are paid each week, since according to the law an employee's overtime compensation cannot be carried over from one pay period to another. It can be used, of course, with bi-weekly, semi-monthly, or monthly pay periods. (4876)

"Under the 'pre-payment' system," continued the Administrator, "the employee is paid a little more each payday than he actually has earned. The details of course are a little more complicated than this and are explained in full in the addition to Interpretative Bulletin No. 4. But in effect, the advance payments build up a reserve of 'overtime due.' For instance, the employee's regular hourly rate may total but $19.50 for an average week's work. The employer, however, pays him $21, or $1.50 more than required. Perhaps the employee will work for three weeks on this basis, thus actually receiving an advance of $4.50 on work not yet performed. And then comes a rush job, and so the extra hours that the employee must now work overtime are charged off at time and a half the regular rate, against the $4.50. Should the job underway call for even more than that sum will pay for, the employee must be paid his full compensation for the 'over-overtime' at the next regular payday.

"In other words, the employee is guaranteed a basic wage each week. He knows he will get it, and the result of this knowledge on his part, from the standpoint of morale and consequently increased efficiency on the job, is too obvious to require further elaboration by me."

Compensation for salaried employees may also be fixed in accordance with these constant wage systems. And where applicable either to salaried workers or hourly wage-earners, the time off and prepayment plans may be used in conjunction with each other. However, in no circumstance may time off be given in one week to balance overtime in another week, if that time off is charged against sick leave, vacation period, or holiday when the worker would normally be released from work.

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