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

Overtime Provisions of Union Agreements and Wage - Hour Act

Explained in Supplement to Official Bulletin

Clarifying the situation as regards operation of the Fair Labor Standards Act in establishments covered by the Act where union agreements are in force, Col. Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor, today announced that all employers who pay overtime compensation under union agreements may consider such compensation as paid also to meet the requirements of the Act. New paragraphs discussing the relationship of employment agreements to provisions of the Wage and Hour law have been issued to supplement Wage and Hour Interpretative Bulletin No. 4, describing the minimum wage and maximum hours coverage of Section 7 of the Fair Labor Standards Act.

"Some employers, for instance," said Colonel Fleming in releasing the new text, "have felt that when they pay overtime compensation in accordance with a union agreement, they may not take credit for doing so but, they believe, if they are to meet the requirements of the Act, they must pay an amount in addition to the amounts paid under the agreement. The additional amount, they understand, must equal time-and-a-half the employee's regular rate of pay for the number of hours worked in excess of 42.

"This is definitely not the case," Colonel Fleming emphasized. "An employer may properly consider as overtime compensation paid by him for the purpose of satisfying the requirements of the Act, any extra compensation he may have paid for overtime work under a union agreement or other agreement.

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"The Act does not require the employer to pay overtime on overtime. Thus, for example, if a union agreement calls for a 42-hour week and overtime at time-and-a-half the regular rate for all hours over the 42, and an employer complies with this agreement, he is automatically obeying the law. However, after October 24 this year, on which date maximum hours allowable will be reduced to forty, if an employer then continues to pay in accordance only with the union agreement, he will not be obeying the law, and his compliance with the union agreement even to the letter will not be an acceptable excuse for violation of the statute.

"At present, if a union agreement calls for a 40-hour week and time-and-a-third after that, and an employee earning a dollar an hour works forty-four hours and is paid $45.32, that is considered compliance, since the employer may always credit himself under the Act with amounts paid by him as actual overtime compensation. The Act's current requirement here would be but $45. Of course, that does not excuse the employer from paying $45.32, which he is required to pay by the union agreement.

"Some misunderstandings have also arisen," declared Colonel Fleming, "in interpreting the Act as it operates in connection with a union agreement requiring time-and-a-half for all hours worked in excess of eight hours a day, the normal or regular work day. Here again, it is entirely unnecessary for an employer to pay overtime on overtime--time-and-a-half on time-and-a-half, so to speak. The 'official' yardstick for calculation of compensation under the Fair Labor Standards Act is the single workweek. Supposing that in one workweek an employee puts in ten hours each on Monday, Tuesday, Wednesday, and Thursday, and on Friday he works eight hours and on Saturday not at all. The total thus is forty eight hours of work, six hours over the present maximum. However, since the union agreement calls for daily overtime compensation at time-and-a-

half for all hours over eight, payment for those first four days is $11 each day—$8 for the first eight hours, and $1.50 each for the two overtime hours. The total pay for the week under the agreement totals $52 the payment of which will satisfy the requirements of the Act.

"A similar case is presented," continued Colonel Fleming, "where a union agreement necessitates the payment of time-and-a-half for all hours worked on a Sunday or holiday, and where in a given workweek an employee earning $1 hourly works eight hours every day except Sunday to a total of 48 hours. Tuesday, we'll say, is a holiday. Under the union agreement the employee is entitled to $12 for Tuesday's work. His pay for the week, then, will total $52 for the 48 hours. Some have contended that to be in accord with the Act, additional payment must be made for the six overtime hours, since Tuesday was a holiday and should be considered separately. The Wage and Hour Division, however, considers that any work on a holiday is generally classed as overtime work. And here again, because payment for the eight-hour holiday on Tuesday exceeds payment required for the six hours in excess of 42, the standard number fixed in the Act; payment in accordance with the union agreement satisfies the requirements of the Act."

Colonel Fleming stated that the supplemented Interpretative Bulletin No. 4, copies of which he said are now available at branch offices of the Wage and Hour Division throughout the country or may be obtained direct from the Division at Washington, contains a number of illustrative examples fully worked out on relationship between union agreements and the Wage and Hour Law. The bulletin also discusses the situation in regard to "supper money" and payment for holidays not worked.

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"Supper money," explained the Administrator, "is frequently paid to employees required to work through or after the regular evening mealtime. Its amount depends variously on union agreements, on the employer's generosity, on the season of the year, or, not infrequently, on whether the worker's position demands pate de foie gras or baked beans to silence the insistence of his appetite. It is our contention that amounts so paid do not normally depend on the number of hours worked, and that since they are not paid primarily as overtime compensation and no Social Security deductions are made from them, employers cannot rightly credit them as overtime wages paid to meet the requirements of the Law.

"Nor can payment made for holidays when establishments are closed be claimed as overtime payments. Occasionally," he continued, "we have encountered employers who claim that since they have paid a man for a holiday in a workweek, they don't have to pay him for overtime actually worked that week. They are wrong, since under the Fair Labor Standards Act, the payments for which an employer can claim credit as overtime compensation paid to his employees fall into just one class--overtime payments actually made for overtime work performed."