

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

TWO OR MORE MINIMA POSSIBLE IN SAME WORKWEEK UNDER AMENDED REGULATIONS

Application of different minimum rates of pay to an employee's payroll record during a single workweek is made possible by new regulations issued today by Colonel Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

In situations where employees during the same workweek work on products subject to different minimum wage rates, the new regulations make it possible for employers to apply the minimum rate of pay prescribed for each product for the number of hours worked on each product. However, when the work is done on a piece-rate basis, amounts earned in excess of the minimum wage on one product may not be used to make up any deficiencies in amounts earned at piece rates on other products covered by other minimum wage rates.

This situation is one which frequently occurs in some divisions of the garment industry operating under the apparel wage order which prescribes four minimum rates for twenty-five divisions of the industry. It is not limited, however, to the garment trade.

The new regulations are applicable to three situations.

- (1) Where employees during the same workweek are employed at two or more different minimum rates of pay established by the same wage order;
- (2) Where employees are employed at two or more different minimum rates of pay established by different wage orders;
- (3) Where employees, during the same workweek, are employed at different minimum rates of pay one of which has been established by a wage order and the other of which is established by the statutory minimum.

The Wage and Hour Division will continue, as a general policy, to enforce the Act on a workweek basis when an employer fails to keep the additional records required by the new regulations.

Thus, employers will be permitted the option of keeping additional records and paying on the basis of the minimum wage rate established for the product, or of continuing, as in the past, to pay the highest applicable minimum rate throughout the workweek without the necessity of maintaining detailed records.

The new regulations are not applicable to employees who are not subject to any wage order. This amendment to the record-keeping regulations primarily requires employers to keep records of the type of goods worked upon by such employees during any workweek, the time spent in working under each minimum wage

rate, the piece work rates and the number of pieces worked on, together with the lot numbers, and the wage order or statutory rate of pay for each type of goods.

The regulations permit employers to keep records on this basis for a trial period of one month. An employer may then elect to keep records on this basis. In the event that he thereafter ceases or fails to do so for any week and wishes to resume the keeping of such records, he may do so only after giving written notice of intention of such resumption to the Wage and Hour Division; and the resumption must await a lapse of two months. This requirement is intended to prevent evasion on the part of employers who might seek to select the basis of payment which is the cheapest for a particular week.

Thus, an employer subject to multiple minimum wage rates who wishes to pay his employees less than the highest applicable minimum wage rate for each entire workweek may pay, for example, an employee engaged during the same workweek in producing all cotton single pants for 20 hours and mixed fabric single pants for 22 hours \$14.75 (\$6.50 or $20 \times 32\frac{1}{2}$ cents, the wage order rate for all cotton pants, plus \$8.25 or $22 \times 37\frac{1}{2}$ cents, the wage order rate for mixed fabric single pants - \$14.75), provided that the additional records are maintained in accordance with the new regulations.

Similarly, if an employee was engaged during a workweek in producing full-fashioned hosiery for 22 hours and engaged in activities not covered by a wage order (but covered by the Act) for 20 hours at 30 cents an hour, the employee may be paid \$14.80 (\$8.80 or 22×40 cents plus \$6.00 or 20×30 cents - \$14.80), provided that the additional records are maintained. In this case likewise, the employee must receive for the work not done under the wage order at least \$6.00 (20×30 cents) exclusive of any amounts earned in excess of the minimum while working under the wage order rate.

The position taken by the Administrator in February, in relation to treating the workweek as a unit, remains in effect for employees whose work is not covered in any workweek by any wage order. Neither does the new interpretation of the Administrator nor the amendment to the record-keeping regulations affect in any way the records to be kept, or compensation to be paid, employees subject to wage orders whose activities can not be segregated (such as clerical and maintenance employees), and who are, therefore, not subject to different minimum wage rates of pay.

A payroll form illustrating the information required by the new regulations follows:

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