

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

WAGE-HOUR CHIEF RELEASES BULLETIN DISCUSSING WAGE PAYMENTS

The wage to which an employee covered by the Fair Labor Standards Act is entitled may include only the actual cost to an employer of board, lodging, or other facilities of the kind customarily furnished as part of regular wages. Any profit realized by the employer in the transaction serves to reduce the employees' real wage by a like amount. If such profit reduces the wage or overtime compensation to less than that to which an employee is entitled under the Act, there is a violation. Also if an employer coerces workers into accepting lodging or other facilities instead of cash, or if he arbitrarily makes deductions from wages when the facilities are not freely accepted or used, the cost of such facilities may not be included as a part of the wages of the employees. The same principles apply also to payment of overtime wages under the wage and hour law.

These and other interpretations of the clause which defines the word "wage" in the Fair Labor Standards Act are given in a publication just released by Colonel Philip B. Fleming, Administrator, Wage and Hour Division, U. S. Department of Labor. The publication, Interpretative Bulletin No. 3 (General Statement as to the Method of Payment Under the Fair Labor Standards Act), is a completely revised edition of the bulletin issued under the same heading in November, 1938.

"The Fair Labor Standards Act has been in operation for nearly two years," Colonel Fleming said in releasing the new text. "Much practical experience has been gained during that period, and the revisions in the bulletin have been made in the light of that experience. A great deal of new material has been added, and sections retained have been clarified."

The Fair Labor Standards Act — commonly known as the Federal Wage and Hour law — covers employees engaged in interstate commerce or the production of goods for such commerce. Only those falling in these classes are affected by the wage discussions in the new bulletin.

Under the Act, an employee must receive compensation for overtime "at a rate not less than one-and-one-half times the regular rate at which he is employed." Where deductions are made for board, the bulletin states, the regular rate of pay remains the stipulated wage before deductions are made. This bars calculating overtime on a rate lowered by such deductions. Where facilities are furnished as additions to the cash wage, the reasonable cost of the facilities must be considered as part of the employee's regular rate of pay. In such instances the "regular rate" will be higher than the cash wage.

"If, however, the cash wage for a 42-hour week equals \$12.60, which is the lowest amount payable for a 42-hour week under the Act," Colonel Fleming said, "no attention need be paid to the value of the facilities. But if the cash wage of a \$12.60 a week employee should only be \$8, say, with deductions made of \$4.60 for facilities furnished, then the employer may not make any profit on the \$4.60. Where overtime is worked and the employee receives the whole or part of his wage in facilities, all such facilities must be measured by the requirements of the Act, and no profit to the employer may reduce the straight pay or overtime compensation of the employee."

Colonel Fleming also indicated certain items which in his opinion may be counted as "facilities" and proper deductions made therefor. Permissible items include meals furnished at company cafeterias; general merchandise such as food, clothing, and household effects distributed through company commissaries or stores; fuel, water, or gas, for the personal and noncommercial use of employees.

"The Wage and Hour Division cannot," said the Administrator, "countenance deduction from the pay of workers for items which are primarily for the benefit of the employer. Explosives used on the job, for instance, are the employer's responsibility. So also are safety caps and miners' lamps, company police and guard protection, taxes and insurance on company buildings; "dues" to organizations to be used, for example, to repay subsidies given the employer to locate

his factory in a given community; charges for rental of uniforms which the employees must wear; costs of medical services, emergency hospitalization, and the like, which the employer is required by law to furnish. These, and similar charges, we believe may not be rightly assessed against employees, and any such deductions will be regarded by the Division as reduction of wages by corresponding amounts."

A completely new section in the revised bulletin discusses assignments of wages. No payment by the employer from a worker's wage to a third party will be recognized as valid, the interpretation says, if it appears that such payment was made with the intent to evade or circumvent any of the legal requirements of the statute or of the regulations issued under the statute. For protection of employer and employee, the bulletin urges that adequate records be kept of all pay assignments and orders relating thereto, and that provisions of the applicable state laws be observed as to signing and witnessing of such documents.

The new bulletin cites a number of practical examples in application of the Fair Labor Standards Act as regards payment of wages. Copies may be examined at regional or branch offices of the Wage and Hour Division or may be secured direct from the Administrator's office at Washington.

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