

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

LAW NO BAR TO ADDED PAY IN LIEU OF VACATIONS

Employers in defense industries planning to give their workers added pay to forego vacations as recommended by the Office for Production Management were advised today by General Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor, to enter such added compensation on their payroll records as a temporary increase in rate.

Added compensation under Wage and Hour regulations must be included in the computation of overtime unless they are gifts "which are in no case compensation for services rendered." Added compensation to forego a vacation legally is not a gift.

The policy of the Wage and Hour Division in this respect was outlined in a letter from General Fleming to a trade association executive who inquired how added payments in lieu of vacations would affect overtime payments.

The letter:

"Certain employers paying employees at regular hourly rates of pay and customarily giving such employees one or more weeks vacation with pay at their regular hourly rate for the number of hours worked in a normal workweek, have been asked in the interests of defense production to eliminate vacations for such employees in so far as possible. It is the desire of such employers to withhold customary vacations but to pay the employees involved their customary vacation money in addition to actual earnings during the workweek or workweeks in which the employees would ordinarily be absent on vacation with pay. Your question is whether such practice will have any effect upon the employees' regular rate of pay under the Fair Labor Standards Act either during the workweek or workweeks in question or on a pro rata basis throughout an employment year.

"The Wage and Hour Division has recently expressed the opinion that an employer may pay an employee at his regular hourly rate of pay for time not worked due to illness, vacation, holiday, or other similar

cause without increasing the regular rate of pay of such employee for overtime purposes under the act. The basis for the opinion is that under such circumstances the employee is paid at a regular hourly rate of pay for certain hours during which he is not at work. On that basis such payments may be excluded when regular rate of pay is determined, since under the Wage and Hour Division's interpretations of section 7 of the act such determination is made from hours actually worked during a workweek and total regular compensation for such hours of employment. However, when employees receive additional compensation in exchange for foregoing a vacation it cannot be said that they are being paid at their regular hourly rate of pay for time not worked. They are in fact receiving additional compensation for hours during which they are at work. In view of this it is our opinion that such additional payments must be considered compensation for hours worked by the employee.

"The remaining question is how such payments are to be calculated into the employees' regular rates of pay and overtime compensation. We suggest that the employees' regular rates of pay and overtime compensation might be increased prospectively for a period of time sufficient to net the desired amount."

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