

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

*Inactive*

ANOTHER U. S. CIRCUIT COURT UPHOLDS DIVISION ON OVERTIME

In an opinion delving deeply into the social and economic aims of Congress in adopting the Fair Labor Standards Act, the United States Circuit Court of Appeals for the Fourth Circuit upholds the Wage and Hour Division, U. S. Department of Labor, in its interpretation of the overtime provisions of the Act.

The opinion, announced today by Thomas W. Holland, Administrator of the Division, is the second Circuit Court opinion upholding the Division in its interpretation that overtime pay must be at the rate of time and one-half the employee's regular hourly rate -- not merely time and one-half the minimum rate under the Act.

Reversing the decision of Judge William C. Coleman, in U. S. District Court at Baltimore, Maryland, the Fourth Circuit Court opinion directs the lower court to enter judgment for William H. Missel against the Overnight Motor Transportation Company, Inc., of Baltimore, which employed him as a dispatcher. Judge Coleman held that Missel was entitled to only time and one-half 30 cents per hour, the minimum rate of pay under the Act, despite the fact that his weekly wage was on a basis higher than that figure.

The Circuit Court opinion, in disallowing the lower court's interpretation of the overtime provisions (Section 7(a)) of the Act, said:

" . . . the court below adopted a 'minimum wage' theory of Section 7(a) and consequently concluded that the overtime provisions of the Act are satisfied by the payment of one and one-half times the statutory minimum rate for each overtime hour -- 'regular rate' and 'minimum rate' becoming synonymous.

"This interpretation makes the overtime provisions of the Act effective only to employees in the lowest wage brackets. Since we have adopted a 'maximum hour' interpretation of Section 7(a), it follows as the night the day that we must reach a different conclusion.

"We think it is clear that 'regular rate' of pay means the actual rate of pay which the employee is receiving, no matter how high, and not the minimum rate set forth in the statute.

"We are unable to agree with the lower court that the primary purposes of the Fair Labor Standards Act are satisfied by the payment of time and one-half the statutory minimum wage for overtime. Furthermore, we do not believe that Section 7(a) is merely part of a broad scheme of minimum wage regulation."

Referring to Congress' aim in adopting the Act, the Circuit Court opinion states:

"It seems plain from the legislative history of the Act that, in addition to attempting to establish a decent national level of working conditions, one of the fundamental purposes of the Act was to induce worksharing and relieve unemployment by reducing hours of work. . . . One of the impelling forces behind the Act is the effort to promote economic stability through increased purchasing power.

"These purposes of the Act are accomplished because the overtime provisions of the Act, requiring employers to pay an extra bonus or penalty for such work, distinctly tend to discourage overtime. This is on the theory that the overtime rate established by the Act will be sufficiently expensive to compel employment of new men, and that employers rather than pay overtime will spread employment."

With reference to the Wage-Hour Division's interpretations, the Circuit Court pointed out that "both interpretative bulletins issued by the Wage and Hour Division and regulations have interpreted 'regular rate at which he is employed' to mean the actual rate the employee is receiving and not the statutory minimum. Although such interpretations are by no means binding on the courts, we consider them highly significant."

While in accord with the opinion of the Circuit Court for the Sixth Circuit, which declared the Division's interpretation of the time and one-half provisions of the Act to be the "unmistakable meaning" of the Act, the opinion announced

today takes decided issue with parts of the opinion of the Fifth Circuit Court, in Fleming v. A. H. Belo Corp. publishers of The Dallas Morning News.

In its reference to this opinion, the Fourth Circuit Court states:

"We are unable to agree with the Circuit Court of Appeals for the Fifth Circuit that the overtime provisions of the Act are merely part of a scheme to raise substandard wages. Rather we conclude that the purpose of Section 7(a) is to eliminate long hours of labor by requiring employers to pay extra compensation for overtime work. Otherwise the guarantees of the Act become 'only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will.'" (The quotation is from an opinion by Mr. Justice Jackson of the U. S. Supreme Court in Edwards v. California.)

The Fleming v. A. H. Belo Corp. case now is before the U. S. Supreme Court and, as the Fourth Circuit Court opinion points out, "It is estimated that the eventual outcome of this case will have a powerful impact and profound effect on many million 'white-collar' workers getting more than the statutory minimum wage."

# # #