

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

EMPLOYER'S PART IN PENSIONS NEED NOT AFFECT
REGULAR RATE OF PAY

Contributions by an employer to pension, annuity and similar plans for the benefit of his employees need not affect the employee's regular rate of pay on which overtime is computed, Thomas W. Holland, Administrator of the Wage and Hour Division, U. S. Department of Labor, stated today in response to numerous inquiries.

Mr. Holland's statement follows:

"It is common business practice for employers to provide benefits for their employees in the form of retirement, pension or other old age benefit plans, sickness or accident disability plans, medical assistance plans and death benefit plans. These plans may be operated through insurance companies or through independent trust funds. The insurance premiums are paid or the funds maintained, as the case may be, by joint contributions of the employer and the employees. The question has been raised as to whether an employer's contributions to such plans or systems must be included in computations of regular rate of pay for purposes of overtime under the Fair Labor Standards Act.

"It is our opinion that provided certain conditions are met, the amount of any payment by an employer on behalf of his employees generally or for a class or classes of his employees on account of the following types of plans need not be reflected in regular rate of pay computations:

1. Retirement, annuity, or pension plans
2. Sickness or accident disability plans
3. Medical and hospitalization plans
4. Death Benefit plans

The conditions which must be met are: (1) The employee must not have the option to receive instead of the benefits under the plan any part of the contributions of the employer and (2) the employee must not have the right to assign the benefits or to receive a cash consideration in lieu of the benefits either upon termination of the plan or his withdrawal from it voluntarily or through severance of employment with the particular employer.

"It is our view that since the benefits under these plans are payable only at a time when the employee performs no work, the employer's contributions to such plans may be regarded as compensation for hours not worked. The compensation is similar to that paid by an employer for absences caused by illness, holidays or the like. In such situations we have already indicated that the compensation for these absences need not

be reflected in an employer's regular rate of pay. Similarly, the employer's contributions to pension plans, etc., are likewise compensation for hours not worked and hence need not be included in regular rate of pay computations."

It was emphasized by Mr. Holland that his opinion was limited strictly to cases of contributions by an employer to the type of plans mentioned in his statement. Such contributions, he pointed out, are clearly distinguishable from contributions by an employer to a savings fund and which contributions are turned over to the employee after he has remained in service for a fixed period of time. In the latter case the contributions represent simply a bonus and may be characterized as a substitute for a wage increase. The ultimate payment of these funds to the employee in no way depends upon the employee's not working at the time he receives them. All such contributions must normally be included in the employee's regular rate of pay for the purposes of determining the overtime compensation due him. A more elaborate discussion of bonus plans will be found in press release R-1548(a).

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