

U. S. DEPARTMENT OF LABOR
Wage and Hour and Public Contracts Divisions
165 West 46th Street
New York, New York

NEW OPINION EXTENDS SCOPE OF PERMISSIBLE PAY ROLL DEDUCTIONS

The Administrator of the Wage and Hour and Public Contracts Divisions of the U. S. Department of Labor, announced today that under both the Fair Labor Standards Act and the Public Contracts Act where more than 40 hours are worked by the employee, deductions may be made on the same basis as in shorter work weeks if the purpose and effect are not to evade the overtime requirements of either Act.

The announcement modifies the position formerly taken under the Fair Labor Standards Act that certain pay roll deductions were illegal in a week in which overtime was worked although if 40 hours or less had been worked in that week the deduction would not have cut into the minimum wage. The modification does not alter the interpretation concerning deductions in weeks of 40 hours or less.

Under the Fair Labor Standards Act the term wage includes the "reasonable cost", as determined by the Administrator, to the employer of furnishing an employee with "board, lodging or other facilities" when such items are customarily furnished.

Accordingly, deductions for such items as housing, meals, fuel and merchandise furnished at a company store may be made even if they reduce the cash wage below the minimum, provided the prices charged do not exceed the reasonable cost of such facilities. When such items are furnished to the employee at a profit, the deductions from wages in weeks in which no overtime is worked are considered to be illegal only to the extent that the profit reduces the wage which includes the cost of the facilities below the required minimum. Deductions for articles such as tools, miners' lamps, dynamite caps, and other items which do not come within the category of "board, lodging or other facilities" are illegal in such weeks to the extent that they reduce the wages of the employee below the minimum required by the Act or by an applicable wage order.

Under the new position of the Administrator, deductions may be made in overtime weeks but the amount thereof is limited to the amount which could be deducted if the employee had worked only 40 hours. For example, if an employee is employed at a rate of 50 cents an hour in an industry covered by a wage order establishing a minimum wage of 40 cents an hour, the maximum amount which may be deducted from his wages in a 40 hour week for items such as tools, dynamite caps, miners' lamps or other articles which are not "facilities" within the meaning of the Act, is 40 times 10 cents or \$4. Deductions in excess of this amount for such articles are illegal in overtime weeks.

There is no limit, of course, on the amount which may be deducted for "board, lodging or other facilities" either in overtime weeks or in weeks when no overtime is worked, providing that these deductions are made for the reasonable cost of the items furnished. When such items are furnished at a profit, the amount of the profit (plus the full amount of any deductions for articles which are not facilities) may not exceed \$4 in the example given in a week when more than 40 hours are worked and may not cut into the minimum due in non-overtime weeks.

Deductions made only in overtime weeks, or increases in the prices charged for articles or services during overtime weeks will be scrutinized to see

whether they are manipulations to evade the requirements of the overtime provisions.

The foregoing interpretation with respect to the permissibility of deduction will apply to both the Fair Labor Standards Act and to the Public Contracts Act.

#