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U. S. DEPARTMENT OF LABOR

WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
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File

OVERTIME PAY REQUIREMENTS REVIEWED BY WAGE-HOUR PUBLIC CONTRACTS ADMINISTRATOR

Questions arising under the mandatory 48-hour week for certain areas to release manpower for war industries today impelled Administrator L. Metcalfe Walling of the Wage and Hour and Public Contracts Divisions of the U. S. Department of Labor to release a summary of those portions of the laws he administers having a bearing on payment of overtime.

President Roosevelt's executive order establishing a minimum 48-hour week in the designated areas does not supersede or conflict with the Fair Labor Standards Act, the Walsh-Healey Public Contracts Act or any other Federal, State or local law on hours of work or overtime, Mr. Walling pointed out.

Since the War Manpower Commission announced the regulations which will implement the 48-hour week executive order, Mr. Walling said, the Wage and Hour and Public Contracts Divisions have been flooded with questions from employers and employees as to who must and who need not be paid overtime under the Federal laws. He pointed out that the Fair Labor Standards Act requires basically that employees engaged in interstate commerce or the production of goods for interstate commerce must receive at least 30 cents an hour for all hours up to 40 each workweek and time and one-half their regular rate of pay for all hours over 40. Employers of certain types of workers are, therefore not subject to the overtime requirement.

Among these, Mr. Walling said, are the following: Employees who are engaged in a bona fide executive, administrative, professional, or local retailing capacity or in the capacity of outside salesman. Also exempt are employees engaged in any retail or service establishment, the greater part of whose selling or servicing is in intrastate commerce. Examples of this type of employee would be those working in home laundries, retail stores, dry cleaning plants, hotels, garages, barber shops or similar establishments. Among others exempt are seamen, agricultural workers, switchboard operators of small telephone exchanges, certain employees engaged in the sea food and fishing industry, some employees of airlines, street, suburban or interurban electric railways, local trolley or local motor bus carriers, or weekly or semi-weekly newspapers with a circulation of less than 3,000 the major part of which is in the county of printing and publication.

Exemptions also apply to persons employed within the area of production engaged in handling, packing, storing, ginning, compressing, canning, pasteurizing, drying, or preparing in their raw or natural state agricultural commodities for market or in making dairy products. Most employees of railway or motor carriers regulated by the Interstate Commerce Commission do not come within the overtime pay provisions of the Act, which is also the case with all employees of employers engaged in the first processing of milk into dairy products, in the ginning and compressing of cotton, in the processing of cotton seed, and in the processing of sugar beets, sugar-beet molasses, sugar cane, or maple sap into sugar or syrup. This exemption does not include the refining of sugar.

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Mr. Walling also declared that certain workers are partially exempt from the maximum hour provisions of the Federal Wage and Hour Law. Among them are employees in industries found by the Administrator to be seasonal. These employees may work up to 12 hours a day or 56 hours a week without payment of overtime rates, for a period or periods not exceeding a total of 14 workweeks in any one year. An exemption from the maximum hour provisions also applies to such employees of employers engaged in the first processing, canning, or packing of perishable or seasonal fresh fruits and vegetables as are, employed in any place of employment where their employers are so engaged. As to employers engaged in the first processing, within the area of production, of agricultural commodities during seasonal operations or in handling, slaughtering, or dressing poultry or live stock, such of these employees as are employed in any place of employment where their employers are so engaged, are exempt from the maximum hour provisions of the Act for a total of not more than 14 workweeks in any one year.

Exemption from the overtime provisions further applies to employees working under an agreement made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board. Such an agreement must provide for an absolute maximum of 1,000 hours' work in a period of 26 consecutive weeks or 2,080 hours' work in any period of 52 consecutive weeks. In the latter case there must be a guarantee of a fixed annual wage or annual employment. In either case work over 12 hours a day or 56 hours a week must be paid for at the rate of time and one-half.

In addition to the overtime pay exemptions under the Wage and Hour Law the Administrator also pointed out that there are exemptions from the overtime pay as well as minimum wage requirements of the Walsh-Healey Public Contracts Act. This Law sets forth the conditions under which supplies for the Government may be contracted for and produced, where such contracts are in excess of \$10,000. In addition to providing for rates of pay and overtime, it sets up health and safety standards and prohibits the production of supplies for the Government with the use of child labor or convict labor.

Like the Fair Labor Standards Act, the Public Contracts Act provides for the payment of minimum wages to covered employees. Differing slightly from the Federal Wage and Hour Law, it provides for the payment of time and one-half after 40 hours a week, or 8 hours a day, whichever amount is larger.

Mr. Walling suggested that the surest standard of determining which employees were covered and which were not under the Public Contracts Act is the manner in which the work of fulfilling Government contracts is actually done. In general, those workers who are actually employed in the production of the materials or supplies are the covered employees. Exempt from the Act entirely, even though they are employed by the plants producing the materials, are office and clerical workers, supervisory employees and maintenance workers. The last includes such employees as electricians, elevator operators, watchmen, janitors, cleaners, other custodial employees and engine room employees.

The Administrator pointed out that any employee who is exempt as an executive, administrative, or professional worker under the Fair Labor Standards Act is also exempt under the Public Contracts Act. He pointed out, however, that many workers who might be exempt from the provisions of the Public Contracts Act would still be entitled to the benefits of the Fair Labor Standards Act.