

UNITED STATES DEPARTMENT OF LABOR
Wage and Hour and Public Contracts Divisions
165 West 46th Street
New York, New York

PAYMENT FOR HOLIDAYS, ILLNESS, ETC. MAY NOT BE CREDITED AGAINST OVERTIME
UNDER WALSH-HEALEY PUBLIC CONTRACTS ACT

A further step toward uniformity in the overtime requirements under the Walsh-Healey Public Contracts Act and the Fair Labor Standards Act was announced today by L. Metcalfe Walling, Administrator of the Division in the United States Department of Labor which enforces both Acts.

Under the new ruling, amounts paid employees for holidays not worked or sickness may not be credited against overtime due under the Walsh-Healey Public Contracts Act. Mr. Walling pointed out that the amounts paid for such hours not worked are not paid as overtime but for a variety of reasons--to reward employees for faithfulness, loyalty and length of service, to bolster personnel morale, to safeguard physical health and well-being of employees by giving them needed rest and relaxation and to conform to progressive business practice. Such amounts cannot therefore be credited to the overtime due under the Fair Labor Standards Act or the Public Contracts Act. This position has been consistently adhered to in interpretations under the Fair Labor Standards Act.

Mr. Walling pointed out that section IV(9)(b)(15) of Rulings and Interpretations No. 2 issued under the Public Contracts Act is superseded by the new interpretation. The interpretation is not retroactive, but takes effect today. Since the rule under the Fair Labor Standards Act remains unchanged, however, this interpretation does not alter the obligation of employers under that Act in this regard.

There is one exception, Mr. Walling stated. This is where there is evidence that part or all of the holiday compensation is actually intended to be overtime compensation instead of pay for hours not worked. This may be implied from the conduct of the employees in agreeing to work extra daily hours or weekly hours in return for time off on the holiday, and it may be implied or expressed in an agreement between the employees and the employer. If this is the case, of course, the situation is not one involving holiday pay as such but the usual one of overtime pay.