

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

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INTERPRETATIVE BULLETIN ON COMPUTATION OF OVERTIME PAY

Interpretative Bulletin No. 4 of the Wage and Hour Division of the U.S. Department of Labor explaining methods of computing overtime pay under the Fair Labor Standards Act and the effect of attempted reductions in the rate of pay was issued today (Friday) by Administrator Elmer F. Andrews.

The bulletin, prepared in the office of the Division's General Counsel, held that overtime work must be compensated at a rate not less than one and one-half times the regular rate at which an employee is employed. It supplemented regulations issued at the same time as to records which must be kept by employers.

The bulletin said, "The Act is clear that it is the employee's regular rate of pay on which time and a half is based, and not any minimum wage set in the Act. Time and a half overtime compensation means one and one-half times the regular hourly rate of pay."

In announcing this interpretation, Administrator Andrews explained that the intent of Congress was clearly to penalize overtime work and that any other interpretation would nullify the provisions of the law.

The discussion of reductions contained in the bulletin was made in connection with Section 18 of the law providing that "No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act."

The bulletin stated that an employer reducing hourly rates in anticipation of a sudden rush of business would be responsible for overtime at the original higher rate because the change is an obvious subterfuge to avoid the intended effects of the maximum hour provisions.

It also stated that an employer purporting to reduce rates of pay but guaranteeing the same total wages as those paid before October 24, the effective date of the Act, must also pay overtime at the old rate.

The bulletin did not attempt to make a definite answer in the case of an employer reducing hourly rates for the future with the intent of working the same number of overtime hours as in the past at the same total wages as those paid before October 24. It pointed out, however, that it is not safe to assume that Section 18 is meaningless and that an employer who gets his employees to accept a reduction in rates on the strength of the maximum hour provisions might find that a court would hold the original higher rate the regular rate of pay.

The Act does not provide for an eight-hour day, the bulletin pointed out, but limits hours on a basis of a normal workweek with provision for time and one-half overtime compensation. Hours lost in one week cannot be made up in the next, whether lost because of holidays, sickness, vacations or insufficient business, without payment of the overtime rate for hours in excess of forty-four worked in the succeeding week.
