

**FLSA-771**

April 25, 1972

This is in reply to your letter of March 31, 1972. You are concerned with the degree of variation in an employee's weekly hours needed to satisfy the overtime requirements of the fluctuating workweek method of compensation under the Fair Labor Standards Act.

The Act does not set any specific standards with respect to the amount of fluctuation required for a valid fluctuating workweek method of payment. It would be difficult to find a clear mutual understanding of the parties, as required by 29 CFR 778.114, that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, if an employee's weekly hours of work seldom varied or in fact remained constant most of the time.

Based on the information furnished in your enclosure, the subject foreman has been paid properly.

Sincerely,

Horace E. Menasco  
Deputy Assistant Secretary